GENERAL FUND TAXES AND WORKFORCE DEVELOPMENT

FINANCIAL INSTITUTIONS

1. SECURITIES AGENTS FEES

Senate: No change to Joint Finance.

Assembly: Delete the Joint Finance provisions that would increase the annual license fee for securities agents and investment adviser representatives from $30 to $60, effective on the general effective date of the bill. As a result, reduce estimated PR-Revenue by $3,000,000 in each year. In addition, as the Department of Financial Institutions (DFI) lapses most unencumbered program revenue to the general fund as GPR-Earned at the end of each year, deleting these provisions would also result in a reduction in the estimated transfer to the general fund of $3,000,000 in each year.

	Chg. to JFC
GPR-REV	- $6,000,000
PR-REV	- $6,000,000

2. ONE-TIME DELAY OF LAPSE TO GENERAL FUND

Senate: Modify the Joint Finance provision to specify that, on a one-time basis, the lesser of the unencumbered balance or $27,000,000 (rather than $20,000,000 under Joint Finance) from DFI's general program operations appropriation [s. 20.144(1)(g)] that would otherwise lapse to the general fund as GPR-Earned at the end of 2007-08 would, instead, be lapsed to the general fund on July 31, 2008, and be credited as GPR-Earned in the 2008-09 fiscal year. As the lapse delay would be for one month only and would not extend beyond the 2007-09 biennium, this provision would have no biennial fiscal effect.

Assembly: No change to Joint Finance.

GENERAL FUND TAXES

1. INDIVIDUAL INCOME TAX DEDUCTION FOR COLLEGE SAVINGS PROGRAMS

Senate: No change to Joint Finance.

Assembly: Expand the current individual income tax deduction for certain amounts paid into an account in a Wisconsin college savings program to include such amounts paid into any college savings program, effective with tax year 2008.

	Chg. to JFC
GPR-REV	- $8,500,000

As provided under federal law, a qualified tuition program (QTP), also known as a section 529 plan [in reference to the section of the Internal Revenue Code (IRC) authorizing such plans], is a program that allows individuals to either purchase pre-paid tuition units or to contribute to a college savings account established for paying a student's qualified education expenses at an eligible educational institution. A QTP can be established and maintained by a state, or an agency or instrumentality of a state, and by an eligible educational institution. For programs satisfying the federal QTP requirements, federal law has provided an individual income tax exemption for earnings in and distributions from (but not contributions to) QTPs established by states since tax year 2002. Effective with tax year 2004, the federal exemption was extended to earnings in and distributions from QTPs offered by eligible private institutions in addition to state-sponsored plans.

Current state law authorizes two types of Wisconsin section 529 programs. The first program is the college tuition and expenses program, under which an individual may purchase "tuition units" for a designated beneficiary. This program was started in 1997, and is administered by the State Treasurer's office with investments managed by the State of Wisconsin Investment Board. The second program is the college savings account program, made up of the EdVest and Tomorrow's Scholar college savings plans, under which individuals contribute to a college savings account for a designated beneficiary (rather than purchasing tuition units). The savings account program is managed by an 11-member College Savings Program Board, and began offering accounts in 2001.

While both types of college savings programs continue to be authorized by state statute, the State Treasurer's office closed the tuition unit option to all new investments, effective December 20, 2002. Instead, EdVest and Tomorrow's Scholar are now offering a wider variety of investment options through the more flexible college savings account program.

State tax law conforms to the federal provisions providing an exemption from income for earnings in, and qualified distributions from, state approved section 529 plans. In addition, for state tax purposes, donors may deduct up to $3,000 in amounts paid into a Wisconsin section 529 plan if the beneficiary is the purchaser, the purchaser's spouse (for a married couple filing a joint tax return), or the purchaser's dependent child. In addition, the deduction is also available for amounts paid by grandparents, great-grandparents, aunts, and uncles of account beneficiaries. The annual deduction for amounts paid into one or more state approved section 529 account for a specific beneficiary is limited to $3,000 per claimant. A married couple filing a joint return is considered one claimant. A contribution to a section 529 plan that was deducted from the account owner's income for individual income tax purposes may not also be deducted under the state's individual income tax deduction for college tuition.

The Assembly proposal would expand the current law income tax deduction for amounts paid on behalf of beneficiaries by certain individuals to a Wisconsin section 529 plan to include such amounts paid into any section 529 plan. Therefore, under the proposal, claimants eligible for the current law deduction would be permitted to deduct up to $3,000 in amounts paid into a section 529 plan offered through EdVest or Tomorrow's Scholar, through another state, or through an eligible private institution. As under current law, the maximum annual deduction

per claimant on behalf of a specific beneficiary would be limited to $3,000, even if the claimant paid into more than one plan on behalf of such beneficiary. In addition, an amount contributed to an out-of-state section 529 plan that was deducted from the account owner's income for individual income tax purposes could not also be deducted under the state's individual income tax deduction for college tuition.

These provisions would first apply to taxable years beginning on January 1, 2008. It is estimated that the fiscal effect would be a reduction in state tax revenues of $8,500,000 in 2008-09 and annually thereafter.

2. ANGEL INVESTMENT AND EARLY STAGE SEED INVESTMENT TAX CREDITS

	Chg. to JFC
GPR-REV	$7,800,000

Senate: Delete provisions, included in the Joint Finance budget, that would increase the maximum annual and total amount of angel investment and early stage seed investment tax credits. Compared to the Joint Finance budget, this would increase state income and franchise tax revenues by an estimated $2,800,000 in 2007-08 and $5,000,000 in 2008-09.

The angel investment tax credit can be claimed under the individual income tax and is equal to 12.5% of the claimant's bonafide angel investment made directly in a qualified new business venture in a tax year. The 12.5% tax credit can be claimed for two years, beginning with the tax year as certified by the Department of Commerce. Consequently, the total tax credit is 25% of the amount invested. Unused credit amounts can be carried forward up to 15 years to offset future tax liabilities. The maximum aggregate amount of angel investment tax credits that may be claimed for a tax year is $3,000,000. The maximum total amount of tax credits that can be claimed for all tax years is $30,000,000.

The early stage seed investment credit can be claimed under the individual income and corporate income and franchise taxes and is equal to 25% of the claimant's investment paid in the tax year to a fund manager that the fund manager invests in a business certified by Commerce (qualified new business venture). Unused credit amounts can be carried forward up to 15 years to offset future tax liabilities. The maximum aggregate amount of early stage seed investment tax credits that can be claimed for a tax year is $3,500,000. The maximum total amount of tax credits that can be claimed for all tax years is $35,000,000.

The Joint Finance budget would make the following modifications to these tax credits.

a. Increase the total amount of angel investment tax credits that can be claimed for all tax years by $17.5 million, from $30 million to $47.5 million. For tax years beginning after December 31, 2007, the aggregate amount of tax credits that could be claimed each year would be increased by $2.5 million, from $3 million to $5.5 million. The maximum amount of investment that could be used as the basis for a tax credit would be increased from $500,000 to $2 million.

b. Increase the total amount of early stage seed investment tax credits that could be claimed for all tax years by $17.5 million, from $35 million to $52.5 million. For tax years beginning after December 31 2007, the aggregate amount of tax credits that could be claimed each year would be increased by $2.5 million, from $3.5 million to $6 million.

Assembly: Adopt the Joint Finance provision. In addition, modify angel investment tax credit provisions to allow qualified investments in businesses engaged in the construction of power plants that derive energy from renewable resources to be eligible for the credit if the business meets all of the other eligibility requirements. The maximum annual limit on total angel investment tax credits ($3.0 million under current law; $5.5 million under the bill) would not be changed. As a result, there would be no fiscal effect.

3. HEALTH SAVINGS ACCOUNTS

Senate: No change to Joint Finance.

	Chg. to JFC
GPR-REV	- $6,500,000

Assembly: Update state tax references to the Internal Revenue Code in order to conform to federal individual income tax exclusions and deductions for health savings accounts (HSAs) as provided under current federal law (through December, 2006), starting with taxable years beginning on or after January 1, 2008. Provide that for tax year 2008, the income tax exclusions and deductions would be 50% of the allowable exclusions and deductions under federal law. For taxable years starting on or after January 1, 2009, the income tax exclusions and deductions would be the same as those provided under federal law.

Under the federal HSA provisions, an eligible individual covered by a high-deductible health insurance plan may make pre-tax contributions to an HSA to cover qualified medical care expenses. The federal HSA provisions took effect on January 1, 2004.

To be an eligible individual and qualify for an HSA, an individual must: (a) have a high-deductible health plan on the first day of the month; (b) with limited exceptions, have no other health coverage; (c) not be eligible for Medicare; and (d) not be claimed as a dependent on someone else's tax return.

A high-deductible health plan is defined as one that has, for tax year 2007, at least a $1,100 annual deductible for self-only coverage and a $2,200 deductible for family coverage. These amounts are indexed annually for inflation. In addition, to be qualified as a high-deductible health plan, the plan must limit annual out-of-pocket expenses paid under the plan to amounts that are also indexed for inflation. For 2007, the out-of-pocket expenses must be limited to no more than $5,500 for individuals and $11,000 for families. Such expenses include deductibles, co-payments, and any other amounts paid for plan benefits.

Contributions to HSAs may be deducted from gross income in the determination of adjusted gross income, and are limited to specified maximum amounts. For 2007, the limits are $2,850 for individuals and $5,650 for families. The limits are adjusted annually for inflation and

are coordinated with those for Archer Medical Savings Accounts (MSAs); contributions to an HSA or an MSA reduce the annual contribution limit for the other type of health account. Individuals who reach age 55 by the end of the tax year may increase their contributions by $800 for 2007, $900 for 2008, and $1,000 for 2009 and thereafter. Contributions may not be made, however, after a participant becomes eligible for Medicare. Excess contributions are subject to a federal excise tax, generally equal to 6% of the cumulative amount of excess contributions that are not distributed from the health account to the contributor.

An individual's employer may also make contributions to an HSA on behalf of an eligible individual. With certain exceptions, if an employer makes such contributions, the employer must make available comparable contributions on behalf of all employees with comparable health insurance coverage during the same period. If employer contributions do not satisfy the comparability rule, then the employer is subject to a federal excise tax equal to 35% of the aggregate amount contributed by the employer to health accounts for that period. [However, effective with tax years beginning after December 31, 2006, employers may make larger HSA contributions for employees that are not classified as highly compensated employees than for those classified as highly compensated employee (as defined under federal law).] If an employer makes contributions to an HSA, the contribution limits described above apply to the aggregate amounts contributed on behalf of the employee. In such a case, the amount contributed by the employer would be excluded from the employee's gross income (and associated unemployment and withholding taxes), and the amount contributed by the employee would be deducted from income on the individual income tax return.

Earnings on HSAs accumulate on a tax-free basis. Distributions from an HSA are not subject to tax to the extent that they are used to pay for qualified medical expenses of the account beneficiary. HSA distributions may not be used to purchase health insurance. Any distributions not used to pay the qualified medical expenses of the account beneficiary are included in federal gross income. Federal law also imposes a penalty of 10% on such distributions. However, the federal penalty does not apply if the distributions are made after the account beneficiary becomes eligible for hospital insurance under Medicare or becomes disabled or dies.

Similar to all HSA distributions, distributions after an account holder attains the age of 65 are tax-free if used to pay for qualified medical expenses and taxable if used for nonqualified purposes. However, an account holder who is 65 or over who uses an HSA distribution for nonqualified purposes is not subject to the 10% penalty that generally applies to nonqualified distributions from an HSA.

It is estimated that the provision would reduce state tax revenues from the individual income tax by $6,500,000 in 2008-09 and by $13,000,000 in 2009-10 and annually thereafter (in 2008-09 dollars).

4. INDIVIDUAL INCOME TAX EXCLUSION FOR RETIREMENT INCOME

Senate: No change to Joint Finance.

	Chg. to JFC
GPR-REV	- $5,500,000

Assembly: Delete the Joint Finance provisions that would provide an individual income tax exclusion for up to $5,000 per person aged 65 or older for taxpayers with adjusted gross income of $15,000 or less ($30,000 or less for married-joint filers), effective with tax year 2009. Provide, instead, an individual income tax exclusion for retirement income for each person aged 65 or older up to a specified maximum amount that would start in tax year 2009 and would increase each year. Provide that the maximum exclusion per person would be $500 for tax year 2009 and $1,000 for tax year 2010. For subsequent tax years, provide that the maximum exclusion would increase by $1,000 per year until 2029, when the maximum exclusion would be $20,000 per person. For tax years starting in 2030, provide that the maximum exclusion would be increased by the annual growth in Wisconsin per capita personal income, as determined by the Department of Revenue (DOR) based on the most recent data available from the federal Bureau of Economic Analysis.

It is estimated that the fiscal effect of the provision would be to reduce state tax revenues from the individual income tax by $8,000,000 in 2008-09, based on assumed reductions in estimated tax payments that would be made for tax year 2009. Compared to the Joint Finance budget, this provision would reduce state tax revenues by $5,500,000 in 2008-09. In subsequent years, it is estimated that general fund tax revenues would be reduced by $24,000,000 in 2009-10 and $48,000,000 in 2010-11. The annual reduction in general fund tax revenues would increase along with the increasing exemption amount, to reach approximately $320,000,000 in 2029-30. These estimates are provided in 2008-09 dollars.

5. INCOME TAX EXEMPTION FOR INTEREST ON CERTAIN WHEFA BONDS

Senate: No change to Joint Finance.

	Chg. to JFC
GPR-REV	- $100,000

Assembly: Provide an exemption from the individual and corporate income taxes for interest paid on certain bonds issued by the Wisconsin Health and Educational Facilities Authority, starting with taxable years beginning January 1, 2008. This exemption would apply if the proceeds of the bonds or notes would be used by a health facility to fund the acquisition of information technology hardware or software.

6. INCREASE IN DEDUCTION FOR COLLEGE TUITION

Senate: No change to Joint Finance.

Assembly: Modify the Joint Finance provisions that would provide a maximum deduction of $6,000 for college tuition and mandatory student fees, starting in tax year ~~2007~~ 1-1-2008.

rather than the current law maximum deduction for tuition (which is equal to twice the average amount charged by the Board of Regents of the University of Wisconsin System at four-year institutions for resident undergraduate academic fees for the most recent fall semester). Specify that, once the maximum tuition deduction as calculated under current law would exceed $6,000, the maximum deduction would be the amount as determined under current law, rather than the $6,000 figure provided under the Joint Finance provisions.

Compared to the Joint Finance provisions, the proposal would have no fiscal effect in the 2007-09 biennium. Based on recent increases in the average amount charged by the Board of Regents of the University of Wisconsin System at four-year institutions for resident undergraduate academic fees, it is estimated that the proposal would result in maximum deductions exceeding $6,000 starting in tax year 2011.

7. VETERANS AND SURVIVING SPOUSES INDIVIDUAL INCOME TAX CREDIT FOR PROPERTY TAXES PAID

Senate: No change to Joint Finance.

Assembly: Expand the individual income tax credit for property taxes paid by certain veterans and surviving spouses, effective with tax year 2009.

As provided under 2005 Act 25, and modified under 2005 Act 72, the state provides a refundable credit against the individual income tax for property taxes paid by certain veterans and unremarried surviving spouses of veterans. The tax credit is equal to real and personal property taxes paid on a principal dwelling by the following persons:

a. The unremarried surviving spouse of a person who died while on active duty in the U.S. armed forces and who was a resident of this state at the time of entry into service and at the time of death.

b. The unremarried surviving spouse of a person who: (1) served on active duty in the U.S. armed forces; (2) was a resident of this state at the time of entry into active service; (3) was a resident of this state at the time of death; (4) was at least 65 years of age at the time of death (or would have been 65 at the close of the year in which the death occurred); and (5) had a service-connected disability of 100%, based on related federal provisions.

c. The unremarried surviving spouse of a person who served in the National Guard or Reserves, who was a resident of this state at the time of entry and at the time of death, and who died in the line of duty while on active or inactive duty.

d. A person who served on active duty in the U.S. armed forces and: (1) was a resident of this state at the time of entry into that service; (2) is a resident of the state for purposes of receiving veterans benefits under Chapter 45 of the Wisconsin statutes; (3) is at least 65 years old; and (4) has a service-connected disability of 100% based on related federal provisions. For married-joint filers, an eligible veteran may claim the credit for the entire property tax imposed

on the veteran's principal dwelling, rather than for the share of property taxes that reflects the veteran's ownership interest in the dwelling (which is 50% for property owned as marital property). For a married couple filing separate returns, an eligible veteran and an eligible spouse are each permitted to claim the veterans property tax credit based on their respective ownership interest in the veteran's principal dwelling.

The veterans property tax credit is not allowed if an individual or the individual's spouse files a claim for the property tax/rent credit, the farmland tax relief credit, the farmland preservation credit, or the homestead credit.

The veterans property tax credit is paid through a sum sufficient GPR appropriation. Based on aggregate statistics for 2005 tax returns through October 15, 2006, there were 301 Wisconsin taxpayers who claimed the credit for tax year 2005. The total credit claims amounted to $866,000, for an average credit of $2,878.

The proposal would make a number of modifications to the current credit, effective with tax year 2009. Under the proposal, the current requirement that, to be eligible for the credit, the veteran with respect to which the credit is claimed has to have been a resident of the state at the time of entry into service would be modified to also provide the credit in the case of a veteran who was a resident of this state for any consecutive five-year period after entry into active duty service. In addition, the age limit requirements under "b" and "d" above would be eliminated. As a result, the credit would be available to the unremarried surviving spouse of a deceased veteran who otherwise meets the current law requirements under "b" but was under age 65 at the time of death. Similarly, the credit would be newly available to a disabled veteran meeting all of the current requirements under "d" except the age requirement. Finally, the service disability thresholds under "b" and "d" would be modified to include veterans rated as being individually unemployable and, therefore, receiving 100% disability benefits, even though they are not rated as 100% disabled under federal law.

For purposes of the credit, "individual unemployability" would mean a condition under which a veteran had a service-connected disability rating of either 60% under related federal provisions or two or more service-connected disability conditions, where one condition had at least a 40% disability rating and the combined disability rating for all conditions was at least 70%. In addition, the veteran would have to have had an administrative adjustment added to his or her service-connected disability, due to individual unemployability, such that the federal Department of Veterans Affairs had rated the veteran 100% disabled.

As a result of the effective date of the proposal, there would be no fiscal effect in the 2007-09 biennium. In subsequent years, it is estimated that the net effect would be to reduce the general fund by $4,500,000 annually, starting in 2009-10. [The net effect reflects an increase of $5,000,000 in the estimated cost of the sum sufficient GPR appropriation through which the credit is paid and an increase in individual income tax revenues of $500,000 from anticipated reductions in claims for individual income tax credits that can not be claimed if the veterans credit is claimed.]

8. INTERNAL REVENUE CODE UPDATE

Senate: No change to Joint Finance.

	Chg. to JFC
GPR-REV	- $8,600,000

Assembly: Modify the IRC update provisions in the bill as approved by the Joint Committee on Finance to also conform state tax references to the provisions of the federal Tax Relief and Health Care Act of 2006 (TRHCA) recommended for adoption by the Department of Revenue. The following table provides a list of the recommended items that are projected to have a significant impact on state tax revenues, along with their estimated fiscal effects.

Summary of Federal Law Changes Under TRHCA with Substantive Fiscal Effects
(In Millions)

	2007-08	2008-09
Individual Income Tax		
Deduction for educator expenses	-$1.86	-$0.28
Mortgage insurance premiums treated as deductible interest	-0.45	-0.15
Individual Income Tax Total	-$2.31	-$0.43
Corporate and Business Taxes		
Energy efficiency commercial buildings property deduction	-$0.08	Minimal
Extend mental health parity provisions	-0.14	Minimal
Wages to Puerto Rico residents included in qualified production activities income	-0.33	-$0.03
Expanded research credits	-2.60	-2.60
Corporate and Business Tax Total	-$3.15	-$2.63
Total	-$5.5	-$3.1

Specify that the provisions would apply for Wisconsin purposes at the same time as they apply for federal purposes. Compared to both the Joint Finance budget and current law, estimate additional reductions in state tax revenues of $5,500,000 in 2007-08 and $3,100,000 in 2008-09.

9. CORPORATE INCOME AND FRANCHISE TAX -- COMBINED REPORTING

Senate: Beginning with tax year 2008, require corporations that are subject to the state corporate income and franchise tax, and that are engaged in a unitary business, to file a combined report for state income and franchise taxes. The specific provisions for filing combined reports would include the following:

	Chg. to JFC
GPR-REV	$130,500,000

(also see #603)

Definitions

"Person" would include corporations, unless the context required otherwise. "Person" could also include, as determined by DOR, any individual, partnership, general partner of a partnership, limited liability company (LLC), registered limited liability partnership, foreign

limited liability partnership, syndicate, estate, trust, trustee, trustee in bankruptcy, receiver, executor, administrator, assignee, or organization.

"Combined group" would mean the group of all persons whose income and apportionment factors are required to be taken into account pursuant to filing a combined report in determining the taxpayer's share of the net business income or loss apportionable to this state.

"Combined report" would be defined as a tax return under state law on a form prescribed by DOR that specified the income, credits, and tax of each taxpayer member of a commonly controlled group operating as a unitary business.

"Commonly controlled group" would be defined to mean any of the following:

(a) A parent corporation and any one or more corporations or chains of corporations that are connected to the parent corporation by direct or indirect ownership by the parent corporation, if the parent corporation owns stock representing more than 50% of the voting power of at least one of the connected corporations, or if the parent corporation or any of the connected corporations owns stock that cumulatively represents more than 50% of the voting power of each of the connected corporations.

(b) Any two or more corporations, if a common owner, regardless of whether or not the owner is a corporation, directly or indirectly, owns stock representing more than 50% of the voting power of the corporations or connected corporations.

(c) Any two or more corporations, if stock representing more than 50% of the voting power in each corporation are interests that cannot be separately transferred.

(d) Any two or more corporations, if stock representing more than 50% of the voting power in each corporation is directly owned by, or for the benefit of, family members. "Family member" would mean an individual related by blood, marriage, or adoption within the second degree of kinship as computed under state law, or the spouse of such an individual.

"Corporation" would mean any corporation as defined under state law, wherever located, which, if it were doing business in this state, would be subject to the state corporate income and franchise tax. The business conducted by a pass-through entity which is directly or indirectly held by a corporation would be considered the business of the corporation to the extent of the corporation's distributive share of the income of the pass-through entity. "Corporation" would not include a tax-option corporation.

"Internal Revenue Code (IRC)" would mean the IRC as defined under state law including any provision of a federal tax treaty that expressly applies to the U.S., but not including any other application of a federal tax treaty.

"Pass-through entity" would be defined as a general or limited partnership, organization of any kind treated as a partnership for tax purposes under state law, a real estate investment

trust, regulated investment company, real estate mortgage investment conduit, financial asset securitization investment trust, trust, or estate.

"Tax haven" would mean a jurisdiction that, for any tax year, is identified by the Organization for Economic Co-operation and Development (OECD) as a tax haven or as having a harmful, preferential tax regime; or has no or nominal effective tax on the relevant income and all of the following apply:

(a) The jurisdiction has laws or practices that prevent effective exchange of information for tax purposes with other governments on taxpayers benefiting from the tax regime.

(b) The details of the legislative, legal, or administrative provisions of the jurisdiction's tax regime are not publicly available and apparent, or are not consistently applied among similarly situated taxpayers, or the information needed by tax authorities to determine a taxpayer's correct tax liability, such as accounting records and underlying documentation, is not adequately available.

(c) The jurisdiction facilitates the establishment of foreign-owned entities without the need for a local substantive presence, or prohibits these entities from having any commercial impact on the local economy.

(d) The tax regime explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking advantage of the tax regime's benefits, or prohibits enterprises that benefit from the regime from operating in the jurisdiction's domestic market.

(e) The jurisdiction has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial or other services sector relative to its overall economy.

"Taxpayer member" would mean a corporation that is subject to the state corporate income and franchise tax, that is a member of a combined group.

"Unitary business" would be defined as a single economic enterprise that consisted of separate parts of a single business entity, or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated by their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. Two or more business entities would be considered a unitary business if the businesses had unity of ownership, operation, and use, as indicated by a centralized management or a centralized executive force; centralized purchasing, advertising, or accounting; intercorporate sales or leases; intercorporate services; intercorporate debts; intercorporate use of proprietary materials; interlocking directorates; or interlocking corporate officers. Any business conducted by a pass-through entity that was owned directly or indirectly by a corporation would be considered conducted by the corporation, to the extent of the corporation's distributive share of the pass-through entity's income, regardless of the percentage of the corporation's ownership interest. A business conducted directly or indirectly by one corporation would be unitary with that portion of a

business conducted by another corporation through its direct or indirect interest in a pass-through entity, if the corporations are sufficiently interdependent, integrated, and interrelated by their activities so as to provide a synergy of value among them and a significant flow of value to the separate parts, and the two corporations are members of the same commonly controlled group.

Corporations Required to Use Combined Reporting

A corporation engaged in a unitary business with any other corporation would be required to file a combined report which included the income, determined under combined reporting, and apportionment factor, determined under current law and combined reporting provisions, of the following members of the unitary business:

(a) Any member incorporated in the United States, including the District of Columbia and any territory or possession of the U.S., or formed under the laws of any state, the District of Columbia, or any territory or possession of the United States.

(b) Any member, regardless of where the entity is incorporated or formed, if the average of the following ratios was 20% or more:

1. The value of the member's real and tangible personal property located in the United States, including the District of Columbia and any territory or possession of the U.S., not including property that is used to produce nonapportionable income, divided by the value of all the member's real property and tangible personal property, not including property that is used to produce nonapportionable income. Property that the member rents would be valued at the net annual rental amount for the property, multiplied by eight.

2. The amount of the member's payroll paid in the United States, including the District of Columbia and any territory or possession of the U.S., divided by the member's total payroll. "Payroll" would include compensation paid to employees, but would not include payroll used to produce nonapportionable income. The payroll paid in the United States would be determined in the same manner as determined for payroll paid in Wisconsin under current law.

3. The member's sales in the United States, including the District of Columbia and any possession or territory of the U.S., divided by the member's total sales. Sales would include items identified in the current law definition of sales, but not items excluded under current law, and the situs of a sale would be determined in the same manner as for Wisconsin sales under current law, except that throw-back provisions would not apply.

(c) Any member that was a domestic international sales corporation as described in the IRC; a foreign sales corporation as described in the IRC; or any member which is an export trade corporation, as described in the IRC.

(d) Any member that was a "controlled foreign corporation," as defined in the IRC, to the extent of the income of that member that is defined in the Internal Revenue Code, including

any lower-tier subsidiaries' distributions of such income which were previously taxed, determined without regard to federal treaties, and the apportionment factors related to that income; any item of income received by a controlled foreign corporation would be excluded if such income was subject to an effective tax rate imposed by a foreign country greater than 90% of the maximum rate of tax specified in the IRC.

(e) Any member that earned more than 20% of its income, directly or indirectly, from intangible property or service related activities that are deductible against the business income of other members of the combined group, to the extent of that income and the apportionment factors related to that income.

(f) Any member that was doing business in a tax haven, if the member is engaged in an activity that was sufficient for that tax haven jurisdiction to impose a tax under federal law. If the member's business activity within a tax haven was entirely outside the scope of the laws and practices that cause the jurisdiction to be a tax haven, the member's business activity would not be considered to be conducted in a tax haven.

(g) Any member not described in (a) through (f) above to the extent its income was derived from, or attributable to, sources within the United States including the District of Columbia and any possession or territory of the U.S., as determined under the Internal Revenue Code, without regard to federal treaties, and by its apportionment factors related to that income.

DOR could require the combined report that was filed to include the income and associated apportionment factor of any persons that were not described under the combined reporting provisions, but that were members of a unitary business, to reflect proper apportionment of income of the entire unitary business, including persons that are not, or would not be, subject to state income and franchise taxes if doing business in this state.

Components of Income Subject to Taxation

Each taxpayer member would be responsible for tax based on its taxable income or loss that would be apportioned or allocated to Wisconsin, and which would include:

(a) Its share of any business income apportionable to this state of each of the combined groups of which it is a member, determined under combined reporting provisions.

(b) Its share of any business income apportionable to this state of a distinct business activity conducted within and without the state wholly by the taxpayer member, determined under current law provisions.

(c) Its income from a business conducted wholly by the taxpayer member entirely within the state.

(d) Its income sourced to this state from the sale or exchange of capital or assets, and from involuntary conversions, as determined under combined reporting provisions.

(e) Its nonbusiness income or loss allocable to this state.

(f) Its income or loss allocated or apportioned in an earlier year, that was state source income during the income year, other than a net business loss carryforward.

(g) Its net business loss carryforward. If the taxable income computed under combined reporting provisions resulted in a loss for a taxpayer member of the combined group, that taxpayer member would have a net business loss, subject to the net business loss limitations and carryforward provisions under current law. The business loss would be applied as a deduction in a subsequent year only if that taxpayer member had net income sourced to this state, regardless of whether the taxpayer was a member of a combined group in the subsequent year.

Determining Business Income of the Combined Group

The business income of a combined group would be determined as follows:

(a) Compute the sum of the income of each member of the combined group determined under federal income tax laws as if the members were not consolidated for federal purposes, and modified for state purposes.

The income of each member of the combined group would be determined as follows:

(1) For any member incorporated in the United States, including the District of Columbia and any territory or possession of the U.S., or included in a consolidated federal corporate income tax return, the income to be included in the total income of the combined group would be the taxable income for the corporation as determined under current law.

(2) Except as provided under (3) below, and for any member not included under (1) above, the income to be included in the total income of the combined group would be determined as follows:

a. Each foreign branch or foreign corporation would prepare a profit and loss statement in the currency in which the books of account of the branch or corporation are regularly maintained.

b. The member would adjust the profit and loss statement to conform it to the accounting principles generally accepted in the United States for the preparation of such statements.

c. The member would adjust the profit and loss statement to conform it to the tax accounting standards required under state income and franchise tax provisions.

d. Each member would translate the profit and loss statement and the related apportionment factors into the currency in which the parent company maintains its books and records.

e. Each member would express income apportioned to this state in United States dollars.

(3) If DOR determined that the income determination reasonably approximated income as determined under current law, any member not included in determining the total income of the combined group could determine its income on the basis of the consolidated profit and loss statement that included the member and that was prepared for filing with the Securities and Exchange Commission by related corporations. If the member was not required to file with the Securities and Exchange Commission, DOR could allow the use of the consolidated profit and loss statement prepared for reporting to shareholders and subject to review by an independent auditor. If the above statements did not reasonably approximate income as determined under current law provisions, the Department could accept those statements with appropriate adjustments, as determined by DOR, to approximate that income.

(4) If a unitary business included income from a pass-through entity, the total income of the combined group would have to include the member of the combined group's direct and indirect distributive share of the pass-through entity's unitary business income.

(5) All dividends paid by one member to another would not be included in the recipient's income, if the dividends were paid out of earnings and profits of the unitary business in the current tax year or an earlier tax year. This provision would not apply to dividends received from members of the unitary business which were not a part of the combined group.

(6) Except as provided by DOR, by rule, business income or loss from an intercompany transaction between members of the same combined group would be deferred in a manner similar to that provided under federal regulations. Upon the occurrence of any of the following events, deferred business income or loss resulting from an intercompany transaction between members of a combined group, would be required to be included in the income of the seller, and be apportioned as business income earned immediately before the event:

a. The object of the deferred intercompany transaction was sold by the buyer to an entity that was not a member of the combined group.

b. The object of the deferred intercompany transaction was sold by the buyer to an entity that was a member of the combined group for use outside the unitary business in which the buyer and seller were engaged.

c. The object of the deferred intercompany transaction was converted by the buyer to a use outside the unitary business in which the buyer and seller were engaged.

d. The buyer and seller were no longer members of the same combined group, regardless of whether the members remain unitary.

(7) A charitable expense incurred by a member of a combined group would, to the extent allowable as a deduction under the IRC, be subtracted first from the business income of the combined group, subject to the income limitations of the IRC applied to the entire business

income of the group, and any remaining amount would be treated as a nonbusiness expense allocable to the member that incurred the expense, subject to the income limitations of the IRC applied to the nonbusiness income of that specific member. Any charitable deduction described under this provision, but allowed as a carryover deduction in a subsequent year, would be considered to be originally incurred in the subsequent year by the same member, and the rules of this provision would apply in the subsequent year in determining the allowable deduction in that year.

(8) Gain or loss from the sale or exchange of capital assets, property subject to special rules for capital gains and losses under the IRC, and property subject to an involuntary conversion, would be removed from the total separate net income of each member of a combined group and would be apportioned and allocated as follows:

a. For short term capital gains or losses, long term capital gains or losses, gains or losses subject to IRC special rules, and involuntary conversions, the business gain and loss of all members would be combined within each class of net business gain or loss, and each such class separately apportioned to each member using the member's apportionment percentage determined under the provisions described below.

b. Each taxpayer member would net its apportioned business gain or loss for all classes, including any such apportioned business gain and loss from other combined groups, against the taxpayer member's nonbusiness gain and loss for all classes allocated to this state, as provided under the Internal Revenue Code, without regard to any of the taxpayer member's gains or losses from the sale or exchange of capital assets, IRC special rules property, and involuntary conversions which are nonbusiness items allocated to another state.

c. Any resulting state source income or loss, if the loss was not subject to the IRC limitations on capital losses, of a taxpayer member produced by the application of the preceding subsections would then be applied to all other state source income or loss of that member.

d. Any resulting state source loss of a member that is subject to the IRC limitations would be carried forward or carried back by that member, and would be treated as a state source short-term capital loss incurred by that member for the year for which the carryforward or carryback applies.

(9) Any expense of one member of the unitary group which was directly or indirectly attributable to the nonbusiness or exempt income of another member of the unitary business would be allocated to that other member as a corresponding nonbusiness or exempt expense, as appropriate.

(b) From the total income of the combined group, determined under (a) above, subtract any nonbusiness income, and add any nonbusiness expense or loss, other than the business income, expense or loss of the combined group.

Taxpayer's Share of the Business Income of the Combined Group (Apportionment)

The taxpayer's share of the business income apportionable to this state of each combined group of which it was a member, would be the product of the business income of the combined group as determined under the combined reporting business income provisions above, and the taxpayer member's sales factor percentage, determined under state law provisions, modified in the following ways:

(a) Include in the numerator the taxpayer member's sales associated with the combined group's unitary business in this state.

(b) Include in the numerator the taxpayer member's sales associated with the combined group's unitary business in another state in which the taxpayer member is not engaged in business, regardless of whether another member of the combined group is engaged in business in the other state.

(c) Include in the denominator the sales of all members of the combined group, including the taxpayer, which sales are associated with the combined group's unitary business regardless of where the business is located.

(d) Include sales of a pass-through entity owned directly or indirectly by a corporation in proportion to a ratio the numerator of which is the amount of the corporation's distributive share of the pass-through entity's unitary income included in the income of the combined group in accordance with (4) above, and the denominator of which is the amount of the pass-through entity's total unitary income.

(e) Exclude sales between members of the combined group.

(f) If a member of a combined group was not subject to the state corporate income and franchise tax because it was not engaged in business in Wisconsin, the numerator of that member's sales factor is zero.

Credits and Post-Apportionment Deductions

No tax credit or post-apportionment deduction earned by one member of the combined group, but not completed, used by, or allowed to that member, could be used in whole or in part by another member of the combined group, or applied in whole or in part against the total income of the combined group.

Designated Agent

Each combined group would be required to appoint a sole designated agent. The designated agent would be the parent corporation of the combined group, if such parent corporation was a taxpayer member of the combined group and the income of the parent corporation was included in the combined report. If there was no such parent, the designated agent could be appointed by the taxpayer members. If there was no such parent and no taxpayer member was appointed, the designated agent would be the taxpayer member that had

the most significant operations in this state on a recurring basis, as determined by the Department. The designated agent would change only when the designated agent was no longer subject to the state corporate income and franchise tax, in which case, the combined group would be required to notify DOR of such a change in a manner prescribed by the Department.

The designated agent would be responsible for acting on behalf of the taxpayer members of the combined group and would do all of the following:

(a) File with the Department a combined report.

(b) File any extensions.

(c) File any amended combined reports and claims for refund or credit.

(d) Send and receive all correspondence with the Department regarding the combined report.

(e) Remit all taxes, including estimated taxes, to DOR. For purposes of computing interest on late payments, all payments remitted would be considered to be made on a proportionate basis by all taxpayer members of the combined group, unless otherwise specified by the designated agent.

(f) Participate on behalf of the combined group members in any investigation or hearing requested by DOR regarding a combined report, produce all information requested by the Department regarding the combined report, and file any appeal related to a combined report. Any appeal filed by the designated agent would be considered as filed by all members of the combined group.

(g) Execute waivers, closing agreements, power of attorney, or other documents regarding the combined report filed. Any waiver, agreement, or document executed by the designated agent would be considered as executed by all members of the combined group.

(h) Receive notices regarding the combined report. Any such notice the Department sent to the designated agent would be considered as sent to all taxpayer members of the combined group.

(i) Receive refunds regarding the combined report. Any such refund would be paid to, and in the name of, the designated agent and would discharge any liability of the state to any member of the combined group regarding the refund.

DOR could relieve the designated agent from any of the duties described, to the extent the duties relate to income, expense, or loss that is not includable in the business income of the combined group. Unless the Department provided for such relief by rule, a designated agent would be required to obtain written approval from the Department to be relieved of any such duties.

Tax Year of the Combined Group

The combined group's tax year would be the designated agent's tax year. If a member's tax year was different from the combined group's tax year, the designated agent could elect to determine the portion of that member's income to be included in the combined report either from a separate income statement from each member prepared from the books and records for the months included in the combined group's taxable year, or by including all of the income for the year that ends during the combined group's tax year.

If two or more members of a combined group filed a federal consolidated return, the combined group's tax year would be the tax year of the federal consolidated group.

Any election made under these provisions would remain in effect for subsequent years unless the designated agent submitted a request to change the election to DOR and DOR approved the change in writing.

Part-Year Members of a Combined Group

If a corporation became a member of a combined group or ceased to be a member of a combined group after the beginning of the tax year of the combined group, the corporation's income would be determined as provided under combined reporting provisions, for the portion of the year in which the corporation was a member of the combined group, and the income would be included in the combined report. The income for the remaining short period would be reported on a separate return or separate combined report.

Presumptions and Burden of Proof

A commonly controlled group would be presumed to be engaged in a unitary business and all of the income of the unitary business would be presumed to be apportionable business income under these provisions. A corporation would have the burden of proving that it was not a member of a combined group that was subject to these provisions.

IRC sections related to consolidated returns would not apply for state purposes under the combined reporting provisions, except for U. S. Treasury regulations relating to deferred gain or loss from an intercompany transaction.

Effective Date

These provisions would first apply to taxable years beginning on or after January 1, 2008.

Fiscal Effect

The Department of Revenue estimates that this proposed method of combined reporting would increase corporate income and franchise tax revenues by $40.5 million in 2007-08, and $90 million in 2008-09 and thereafter.

In general, Wisconsin corporate income and franchise tax liability is computed using federal provisions to determine income and deductions, and then apportioning the net income of a multistate corporation, applying the tax rate, and allowing for any credits. A corporation that conducts all of its business and owns property only in Wisconsin has all of its income subject to taxation in Wisconsin. The taxable income of a corporation that is operating within and outside of Wisconsin through multiple divisions or branches is generally determined through formula apportionment. In certain cases, separate accounting is permitted, and certain types of income (nonapportionable income -- gain or loss from sales, rents, and royalties from nonbusiness real or tangible personal property) are specifically allocated to the state for tax purposes.

Under Wisconsin law, formula apportionment is used if a corporation's Wisconsin activities are an integral part of a unitary business which operates both within and outside of the state. Generally, a unitary business is one that operates as a unit; its business cannot be segregated into independently operating branches. Its operations are integrated, and each branch is dependent upon or contributory to the operating of the business as a whole. In these cases, the corporation adds its total gross income from its in-state and out-of-state unitary activities, subtracts its deductions, and multiplies the amount of net income by its apportionment ratio as determined by the Wisconsin apportionment formula. The apportionment ratio is used to approximate how much of a corporation's total net income is generated by activities in Wisconsin.

Under provisions included in 2003 Wisconsin Act 37, enacted in July, 2003, use of a single sales factor apportionment formula for most multistate corporations will be phased in over three years, beginning in 2006. In general, the phase-in of the single sales factor apportionment formula will be accomplished as follows (insurance companies and financial institutions have special provisions): (a) for tax years beginning before January 1, 2006, income was apportioned using an apportionment formula with the sales factor representing 50% of the apportionment ratio, the property factor representing 25%, and the payroll factor representing 25%; (b) for tax years beginning after December 31, 2005, and before January 1, 2007, the apportionment ratio was calculated with the sales factor representing 60% of the apportionment ratio, the property factor representing 20%, and the payroll factor representing 20%; (c) for tax years beginning after December 31, 2006, and before January 1, 2008, the apportionment ratio will be calculated with the sales factor representing 80% of the apportionment ratio, the property factor representing 10%, and the payroll factor representing 10%; and (d) for tax years beginning after December 31, 2007, a single sales factor apportionment formula will be used to apportion income to Wisconsin.

Wisconsin taxes each corporation separately. Consequently, taxable income is determined using only the gross income, business expenses, and apportionment factors that reflect the unitary operations of a single corporation that is conducting business, at least in part, in Wisconsin. The income, business expenses, and formula factors of affiliated corporations are not included, even if the business operations of the affiliated corporations would be considered part of a single unitary business. If the state has nexus with affiliated corporations engaged in a

unitary business they are taxed separately. If the state does not have nexus with such corporations, they are not taxed by the state.

Assembly: No change to Joint Finance.

10. REGULATED INVESTMENT COMPANY AND REAL ESTATE INVESTMENT TRUST -- DIVIDENDS PAID DEDUCTION

Senate: Modify the method of calculating net income for regulated investment companies (RICs) and real estate investment trusts (REITs) to specify that the dividend paid deduction otherwise allowed by federal law in computing the net income of an RIC or REIT that is subject to federal income tax would be required to be added back to income in computing the state income and franchise tax, unless the RIC or REIT was a qualified RIC or qualified REIT, respectively.

	Chg. to JFC
GPR-REV	$3,000,000

"Qualified REIT" would be defined to mean an REIT, except an REIT: (a) of which more than 50% of the voting power or value of the beneficial interests or shares are owned or controlled, directly or indirectly, by a single entity that is subject to federal Internal Revenue Code provisions governing corporate distributions and adjustments (including distributions, liquidations, organizations and reorganizations, carryovers, and treatment of certain interests as stock or indebtedness); (b) that is not exempt from taxation under state law; and (c) that is not an REIT or a qualified real estate trust subsidiary as defined under the IRC.

"Qualified RIC" would be defined as an RIC, except an RIC: (a) of which more than 50% of the voting power or value of the beneficial interests or shares are owned or controlled, directly or indirectly, by a single entity that is subject to IRC provisions governing corporate distributions and adjustments; (b) that is not exempt from taxation under state law; and (c) that is not an RIC as would be defined under state provisions.

State definitions of REIT, RIC, and real estate mortgage investment conduit (REMIC) would be referenced to the IRC. Statutory provisions that are currently used to update references to the IRC for REITs, RICs, and REMICs would be deleted. The Department of Revenue indicates that these updating provisions are not necessary because federal provisions related to REITs, RICs, and REMICs are included whenever state law is referenced to the IRC for corporations. Specific provisions defining income for REITs, RICs, and REMICs through references to the appropriate sections of the IRC would be adopted. These definitions would be automatically updated whenever state corporate income and franchise tax references were updated by the Legislature. Also, statutory provisions would specify the state treatment of differences between depreciation or adjusted basis for federal and state income tax purposes.

These provisions would first apply to tax years beginning on or after July 1, 2007, and would increase income and franchise tax revenues by an estimated $3.0 million in 2007-08.

Under another provision, corporations would be required to file a combined report for state corporate income and franchise taxes, for tax years beginning after December 21, 2007. Under the combined reporting provisions, corporations would no longer be able to reduce income through the specific practices these provisions would prevent. Additional revenue generated is reflected in the fiscal effect for combined reporting.

Regulated investment companies, commonly known as mutual funds, are corporations that act as investment agents for their shareholders. RICs typically invest in government and corporate securities and distribute dividend and interest income earned from the investments as dividends to their shareholders. A corporation must meet all of the following in order to be classified as an RIC:

a. It must be a domestic corporation.

b. It must be registered under federal law either as a management company or unit investment trust, or have an election under the law to be treated as a business development company, or it must be a common trust fund or similar fund that is neither an "investment company" under the law, nor a "common trust fund" maintained by a bank.

c. It must derive at least 90% of its gross income for the current tax year from dividends, interest, payments with respect to securities loans, gains from the sale or other disposition of stock, securities, or foreign currencies, or other income (including gains from options, futures, or forward contracts) derived from the RIC's business of investing in stock or securities or currencies.

d. At the close of each quarter, at least 50% of the value of its assets must be represented by cash, cash items, government securities, securities of other RICs and other issuers.

e. It does not have more than 25% of the value of its total assets invested in the securities of any one issuer that are controlled by a single parent corporation and in a similar business.

f. It distributes at least 90% of its ordinary income and tax-exempt interest income to its shareholders.

g. It files an election to be treated as an RIC for tax purposes.

In addition, to qualify as an RIC, a corporation is required to distribute at least 90% of its ordinary and exempt interest income to its shareholders each tax year. If the thresholds are met, the corporation will only be taxed on the undistributed portion of its income. The ordinary income distribution threshold for an RIC is met by distributions out of its investment company taxable income. Any portion of this income that remains undistributed at the end of the tax year is subject to ordinary corporate income tax rates. Investment company taxable income is the taxable income of the RIC, calculated in the same manner as the taxable income of regular corporations, with certain modifications, including: (a) a dividends paid deduction may be

claimed for any ordinary income distributions; (b) net capital gains are not included; (c) net operating losses may not be claimed; and (d) no deduction may be claimed for dividends received from other corporations.

There is no distribution threshold for the net capital gains of a RIC. Any distribution must be paid out from the net capital gain for that year. If any net capital gains remain undistributed, the RIC will be taxed at the corporate capital gains rate on the difference between all of the RICs net capital gains and the deduction for dividends paid (computed only with respect to capital gains dividends).

An REIT is an organization or corporation that is designed to act as an investment agent for its shareholders to enable small investors to pool resources together to make real estate investments that they might not otherwise be able to individually. A corporation, association, or trust must meet the following ownership and purpose requirements in order to qualify as an REIT:

a. Beneficial ownership in the organization must be held by at least 100 persons for at least 335 days during the 12-month tax year.

b. The beneficial ownership must be evidenced by transferable shares or certificates of beneficial interest.

c. The organization's management must be in the hands of one or more trustees or directors, with the trustees generally holding legal title to the organization's property and having exclusive authority over management.

d. The organization must possess all other necessary attributes that would, except for its treatment as a REIT, cause it to be taxed as a corporation.

e. Five or fewer individuals may not directly or indirectly own more than 50% of the value of the organization's stock during the last six months of the organization's tax year.

f. The organization cannot be a financial institution or an insurance company.

g. The organization must distribute at least 90% of its taxable income for the tax year to its shareholders.

h. The organization must elect to be treated as an REIT.

An REIT must also meet the following income and investment requirements:

a. At least 95% of the REIT's gross income must be from dividends, interest, rents from real property (including rents from interests in real property), net gains from the sale or other disposition of stock, securities, real property, and interests in mortgages on real property, abatements and refunds of taxes on real property (including foreclosure property involuntarily acquired), and gain from the sale of a real estate asset that is not a prohibited transaction.

b. At least 75% of the REIT's gross income must be derived from real property. Included within this 75% category are rents from real property, interest on obligations secured by mortgages on real property, net gain from the sale of real property and interests in mortgages on real property, dividends and other distributions from, and net gain on sale or other disposition of transferable shares in, other REITs, abatements and refunds of taxes on real property, and gain from the sale of a real estate asset that is not a prohibited transaction.

At the close of each quarter of the tax year, REITs must meet two tests regarding their assets: (a) 75% of the value of total assets must be represented by real estate assets, cash and cash items, or government securities; and (b) not more than 25% of the value of the REIT's assets may be represented by securities other than those described in the 75% test, and the entire amount of securities of any one issuer may not exceed 5% of the value of the total assets of the REIT or 10% of the voting securities of the issuer.

As noted, to qualify as a REIT, an organization is required to distribute to its shareholders at least 90% of its taxable income each tax year. If this threshold is met, the REIT is only taxed on the undistributed portion of its income at corporate income tax rates. To the extent the income is paid out as an ordinary dividend, the REIT may claim a dividends paid deduction for the amount of the dividend distribution. Under federal law, the REIT shareholder is not permitted to claim a dividends received deduction for the dividend, and the dividend distribution is taxed at the shareholder level. The REIT is a pass-through entity and the shareholder pays the tax on the REIT income when received as a dividend.

There is no distribution threshold for the net capital gains of a REIT. But any distribution of capital gains to shareholders must be paid out of the organization's net capital gains for that year. No deduction is provided for capital gains dividends distributions, and any undistributed capital gains are subject to taxation at the REIT level.

The modifications adopted by the Senate are designed to address two general types of business practices where REITs have been used to avoid state taxation. One type of practice generally involves large multi-state retailers that transfer ownership of the retailer's real property to a related REIT. The REIT charges the retailer rent for use of the property, which reduces the retailer's taxable income and state tax liability. Due to the ownership of property in the state, the REIT is subject to state income taxes. However, the REIT typically distributes the rental payments as dividends to an affiliated or holding company that is located in a state that allows a dividends received deduction for REIT distributions, has no state corporate income tax, or that allows combined reporting. The REIT would not pay taxes on the rental income because it may claim a dividends paid deduction for the distributions of rental income to the affiliated or holding company. The affiliated or holding company also would not pay taxes on the distribution because it could: (a) claim a dividends received deduction for the rental payments distribution; (b) is located in a state, such as Delaware, that imposes no state income tax on this type of income; or (c) is located in a state that allows or requires combined reporting, which requires all intercompany transfers, such as dividend payments, to be eliminated in calculating taxable income.

A second similar practice generally involves multi-state banks. In this case, the bank transfers its mortgages or mortgage-backed securities to a related out-of-state REIT. As a result, the bank would shift its mortgage-related income to the REIT. If the REIT has no nexus with the bank's state, interest on the mortgages and related securities cannot be taxed by that state. In such cases the REIT may be located in a state which imposes no state income tax on the REIT, and the interest income is not taxed. If the REIT is subject to taxation by the bank's state or the state in which it operates, it can distribute the interest income as a dividend to an affiliate or holding company and claim a dividends paid deduction for that interest dividend. In turn, the affiliated or holding company would not pay taxes on the interest dividend for the reasons described in the preceding paragraph.

It should be noted that the inherent nature of an REIT is that it is a pass-through entity and generally not subject to taxation. When used as designed, an REIT is intended to result in income being taxed only once at the shareholder level. Moreover, most publicly-traded REITs are established for investment purposes, and not as vehicles for tax avoidance.

RICs are included because they operate very similar to REITs.

Assembly: No change to Joint Finance.

11. ELECTRONIC MEDICAL RECORDS TAX CREDIT

Senate: No change to Joint Finance.

Assembly: Delay the applicability date, to first apply to tax years beginning after December 31, 2009 (rather than December 31, 2008), of the electronic medical records tax credit that would equal 50% of the amount paid by a health care provider for information technology hardware and software that is used to maintain medical records in an electronic form. Compared to the Joint Finance budget, this would increase state income and franchise tax revenues by an estimated $4,500,000 in 2008-09.

	Chg. to JFC
GPR-REV	$4,500,000

12. COMMUNITY REHABILITATION PROGRAM TAX CREDIT

Senate: No change to Joint Finance.

Assembly: Delay the applicability date of the community rehabilitation program tax credit that would equal 5% of the amount the claimant pays in a tax year to a community rehabilitation program to perform work for the claimant's business, pursuant to a contract, to first apply to tax years beginning on or after July 1, 2008 (rather than July 1, 2007). Compared to the Joint Finance budget, this provision would increase state income and franchise tax revenues by an estimated $3,300,000 in 2007-08.

	Chg. to JFC
GPR-REV	$3,300,000

13. BIODIESEL FUEL PRODUCTION TAX CREDIT

Senate: No change to Joint Finance.

Assembly: Create a tax credit, for tax years beginning on or after January 1, 2008, and before January 1, 2011, under the state individual income and corporate income and franchise taxes, equal to 10 cents per gallon for biodiesel fuel produced, up to a maximum of 10 million gallons per year (maximum credit of $1,000,000) for biodiesel fuel producers located in Wisconsin that produce at least 2.5 million gallons of biodiesel fuel per year. This provision would reduce state income and franchise tax revenues by an estimated $800,000 in 2007-08 and $1,800,000 in 2008-09.

Chg. to JFC
GPR-REV - $2,600,000

14. WORKPLACE WELLNESS TAX CREDIT

Senate: No change to Joint Finance.

Assembly: Create a workplace wellness tax credit, under the state individual income and corporate income and franchise taxes, for tax years beginning on or after January 1, 2009, equal to 30% of the amount paid by a claimant in a tax year to provide a workplace wellness program to any employee who is employed in Wisconsin, excluding amounts paid to acquire, construct, rehabilitate, remodel, or repair real property. The tax credit could be claimed for three years, and unused credit amounts could be carried forward up to 15 years to offset future tax liabilities. The total amount of credits that could be claimed in a year would be limited to $2,500,000 for all claimants who employ 50 or fewer employees, and to $2,500,000 for all claimants who employ more than 50 employees.

Chg. to JFC
GPR-REV - $2,000,000

"Workplace wellness program" would be defined as a health or fitness program, as defined by rule promulgated by the Department of Commerce, that is provided with health risk assessments and includes the following programs or services: (a) smoking cessation; (b) weight management; (c) stress management; (d) worker injury prevention programs; (e) health screenings; (f) nutrition education; and (g) health or fitness incentive programs. "Health risk assessment" would mean a computer-based health-promotion tool consisting of a questionnaire; a biometric health screening to measure vital health statistics, including blood pressure, cholesterol, glucose, weight and height; a formula for estimating health risks; an advice database; and a means to generate reports.

Partnerships, limited liability companies (LLCs), and tax-option corporations (S corporations) could not claim the tax credit, but eligibility for, and the amount of, the tax credit would be based on payments for workplace wellness programs. Partnerships, LLCs, or tax-option corporations would be required to compute the amount of credit that each of their partners, members, or shareholders may claim and provide that information to them. Partners, members of LLCs, and shareholders of tax-option corporations could claim the credit in proportion to their ownership interest. The Department of Revenue would administer the tax

credit under individual income and corporate income and franchise tax provisions, and provisions related to change of business or ownership, administration, and timely claims would apply to the credit.

The Department of Commerce would be required to implement a program to certify workplace wellness programs as eligible for tax credits and to allocate credits to businesses, subject to the annual total credit limitations ($5,000,000 total; $2,500,000 for businesses with 50 or fewer employees; and $2,500,000 for businesses with more than 50 employees). Commerce would have to inform DOR of every business that had a workplace wellness program certified, and of the amount of tax credits allocated to the business. Commerce, in consultation with the Departments of Revenue and Health and Family Services, would also be required to promulgate rules to administer certification and allocation of workplace wellness tax credits.

These provisions would reduce state income and franchise taxes by an estimated $2,000,000 in 2008-09 and $5,000,000 in 2009-10, and annually thereafter.

15. DAIRY MANUFACTURING FACILITY INVESTMENT TAX CREDIT

Senate: No change to Joint Finance.

Assembly: Modify provisions that would create a dairy manufacturing investment tax credit equal to 10% of amounts paid for dairy manufacturing modernization or expansion related to a dairy manufacturing operation to make the tax credit refundable. However, the total amount of tax credits that could be claimed would be limited to $600,000 for tax years beginning after December 31, 2006, and before January 1, 2008, and to $700,000 for tax years beginning after December 31, 2007, and before January 1, 2015. The Department of Commerce would be responsible for allocating tax credits among claimants.

	Chg. to JFC
GPR-REV	$1,300,000
GPR	$1,300,000

16. BELOIT DEVELOPMENT OPPORTUNITY ZONE EXTENSION

Senate: No change to Joint Finance.

Assembly: Delete the Joint Finance provision that would increase the term of designation of the Beloit development opportunity zone from seven to nine years, and that would increase the total amount of tax credits that could be claimed by businesses in the zone by $2,000,000, from $4,700,000 to $6,700,000. Compared to the Joint Finance budget, this provision would increase corporate income and franchise tax revenues by $100,000 in 2008-09.

	Chg. to JFC
GPR-REV	$100,000

17. ENTERPRISE ZONE JOBS CREDIT MODIFICATIONS

Senate: No change to Joint Finance.

Assembly: Modify enterprise zones provisions to require that the enterprise zone program be named the "rural enterprise zone program" and the tax credit the "rural enterprise zone tax credit", and to specify that a rural enterprise zone could not include any city of the first class, or a city with a population greater than 200,000.

18. SALES AND USE TAX ON BIOTECHNOLOGY

Senate: No change to Joint Finance.

Assembly: Delete the Joint Finance provisions that would create five sales and use tax exemptions related to biotechnology, effective on the first day of the second month beginning after publication of the budget bill. Compared to the Joint Finance budget, estimate increased sales and use tax revenues of $3,300,000 in 2007-08 and $4,500,000 in 2008-09. There would be no change to current law.

	Chg. to JFC
GPR-REV	$7,800,000

19. STREAMLINED SALES AND USE TAX

Senate: No change to Joint Finance.

Assembly: Delete the Joint Finance provisions that would modify Wisconsin's sales and use tax laws to conform to the provisions of the Streamlined Sales and Use Tax Agreement (SSUTA), effective January 1, 2008. In addition, delete the sum sufficient PR appropriation that would be created for the purpose of paying associated annual fees, as well as funding for such fees of $20,000 in 2007-08 and $40,000 in 2008-09. Compared to the Joint Finance budget, estimate reductions in sales and use tax revenues of $1,300,000 in 2007-08 and $3,500,000 in 2008-09, and reductions in PR expenditures of $20,000 in 2007-08 and $40,000 in 2008-09.

	Chg. to JFC
GPR-REV	- $4,800,000
PR	- $60,000

20. SALES TAX ON SERVICES PROVIDED BY TEMPORARY HELP COMPANIES

Senate: No change to Joint Finance.

Assembly: Create an exemption from the sales and use tax for charges for services provided by a temporary help company if the client for whom the services are provided controls the means of performing the services and is responsible for the satisfactory completion of the services. Define "temporary help company" as under the unemployment insurance statutes to mean an entity that contracts with a client to supply individuals to perform services for the client on a temporary basis to support or supplement the workforce of the client in situations such as personnel absences, temporary personnel shortages, and workload changes resulting from seasonal demands or special assignments or projects, and which, both under contract and in fact:

a. Negotiates with clients for such matters as time, place, type of work, working conditions, quality, and price of the services;

b. Determines assignments or reassignments of individuals to its clients, even if the individuals retain the right to refuse specific assignments;

c. Sets the rate of pay of the individuals, whether or not through negotiation;

d. Pays the individuals from its account or accounts; and

e. Hires and terminates individuals who perform services for the clients.

Specify that these provisions would take effect on July 1, 2009. Based on the effective date, there would be no fiscal effect of the provision in the 2007-09 biennium. It is estimated that the provision would reduce sales and use tax revenues by $4,200,000 annually in 2009-10 and thereafter. This estimate is provided in 2008-09 dollars.

21. SALES TAX ON DIGITAL PRODUCTS

Senate: No change to Joint Finance.

Assembly: Delete the Joint Finance provisions that would impose the state sales and use tax on certain digital products that would be subject to the tax if furnished in tangible form, effective January 1, 2008. Compared to the Joint Finance budget, reduce estimated sales and use tax revenues by $1,000,000 in 2007-08 and $2,400,000 in 2008-09. There would be no change compared to current law.

	Chg. to JFC
GPR-REV	- $3,400,000

22. SALES TAX EXEMPTIONS RELATED TO WIND, SOLAR, AND GAS FROM ANAEROBIC DIGESTION OF AGRICULTURAL WASTE

Senate: No change to Joint Finance.

Assembly: Create a sales and use tax exemption for a product, other than an uninterruptible power source for computers, whose power source is wind energy, direct radiant energy received from the sun, or gas generated from anaerobic digestion of animal manure and other agricultural waste, if the product produces at least 200 watts of alternating current or 600 British thermal units per day. In addition, create a sales and use tax exemption from the sale of, and the use or other consumption of, electricity or energy that is produced from such a product. Provide that the exemptions would take effect July 1, 2008. Estimate a reduction in sales and use tax revenues of $1,300,000 in 2008-09 and annually thereafter.

	Chg. to JFC
GPR-REV	- $1,300,000

23. SALES TAX EXEMPTION FOR PERFORMING ARTS

Senate: No change to Joint Finance.

Assembly: Delete the Joint Finance provision that would provide a sales tax exemption for admissions to performances and events produced by non-profit cultural arts organizations. The Joint Finance provision would take effect on January 1, 2009, and was estimated to reduce state sales tax revenues by $375,000 in 2008-09 and $1,500,000 annually thereafter.

	Chg. to JFC
GPR-REV	$375,000

24. SALES AND USE TAX EXEMPTION FOR COINS, CURRENCY, AND BULLION

Senate: No change to Joint Finance.

Assembly: Provide a sales and use tax exemption for the following: (a) United Stated coins; (b) United States currency; (c) bars, ingots (not including the mold in which the metal is cast), or coins made from gold, silver, platinum, palladium, or any combination of such medals; and (d) commemorative medallions. Provide that the exemption would take effect on July 1, 2008.

	Chg. to JFC
GPR-REV	- $250,000

Current law defines tangible personal property, for purposes of the sales tax, to include U.S. coins and stamps sold or traded as collectors' items above their face value. The sales tax is generally imposed on sales of tangible personal property, unless specifically exempted. Based on the inclusion of U.S. coins and stamps sold or traded as collectors' items above their face value in the definition of tangible personal property, and in the absence of a specific exemption for such items, the items are currently subject to the sales and use tax.

The proposal would create a sales and use tax exemption for U.S. coins and currency, commemorative medallions, and bars, ingots, and coins made of certain metals from the sales and use tax.

Based on information provided by the Department of Revenue on companies remitting sales and use tax to whom such an exemption would likely apply, and also on information from the United States Census Bureau, it is estimated that the exemption would result in reduced state tax revenues of approximately $250,000 in 2008-09 and annually thereafter.

25. SALES AND USE TAX EXEMPTION FOR NONPROFIT CEMETERIES

Senate: No change to Joint Finance.

Assembly: Create a sales and use tax exemption for otherwise taxable tangible personal property or taxable services used exclusively by a cemetery company or corporation (as described under federal

	Chg. to JFC
GPR-REV	- $150,000

provisions for organizations that are exempt from federal tax) for the purposes of the company or corporation. Provide that the exemption would take effect July 1, 2008. 2009

Under current state law, all tangible personal property and taxable services sold to nonprofit organizations operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, are exempt from tax if the organization obtains and gives a certificate of exempt status number to the seller. Current law does not provide exemptions specific to cemetery companies and corporations, nor are such entities eligible for the exemption for nonprofit organizations (unless they are owned by an eligible religious or other nonprofit organization with an exemption certificate).

Federal law provides an exemption from federal income taxes for certain nonprofit cemetery companies and corporations chartered solely for the purpose of the disposal of human bodies by burial or cremation for which no part of the net earnings inures to the benefit of any private shareholder or individual. The proposal would provide a state sales and use tax exemption for sales to such companies and corporations

Based on consultation with the Wisconsin Cemetery and Cremation Association, it is estimated that the proposal would reduce state sales and use tax revenues by approximately $150,000 in 2008-09 and annually thereafter.

26. SALES TAX ON CERTAIN INTERCOMPANY TRANSFERS OF ASSETS

Senate: In response to a March 8, 2007, decision of the Wisconsin Supreme Court in *Wisconsin Department of Revenue v. River City Refuse Removal, Inc.* that concluded that certain intercompany transfers of assets between subsidiaries of the same parent company in which no money exchanged hands did not qualify as retail sales (and were, therefore, not subject to Wisconsin use tax), modify the sales and use tax to provide that the tax would apply in the case of such transfers.

Specify that a person who makes sales of tangible personal property or taxable services is a retailer regardless of the following: (a) whether the transaction is mercantile in nature (as is also the case under current law); (b) whether the seller sells smaller quantities of goods from an inventory; (c) whether the seller makes or intends to make a profit from the sale; (d) whether the seller or buyer reaps a bargained-for benefit; (e) the percentage of the seller's total sales that the sale represents; and (f) any other activities in which the seller is engaged. Provide that the same changes would apply with respect to the definitions of "sale," "sale, lease, or rental," "retail sale," "sale at retail," and "seller."

In addition, provide that "consideration," as used in the definition of "purchase," would include transactions where a person's books and records showed the transaction created either an obligation to pay a certain amount or an increase in accounts payable (for the transferee), or a right to receive a certain amount of money or an increase in accounts receivable (for the transferor). Specify that "credits," as used in the definition of "gross receipts," would also

include such transactions, as would the terms "sale," "sale, lease or rental," "retail sale," and "sale at retail."

Amend the sales and use tax statutes to provide that, unless specifically exempted: (a) all sales, leases, or rentals of tangible personal property at retail in Wisconsin are subject to the state sales tax; (b) the selling, performing, or furnishing of taxable services at retail in this state are subject to the state sales tax; and (c) the storage, use, or other consumption in this state of all tangible personal property, and the use or other consumption in this state of a taxable service, purchased from any retailer is subject to the state use tax. In addition, modify provisions related to the local food and beverage tax, local rental car tax, state rental vehicle fee, and the regional transit authority fee to include references to "a" and "c."

Provide that these provisions would take effect retroactively to January 1, 2006. The effective date would be consistent with provisions under 2005 Act 25 that specified that a "retailer" includes every seller who makes any sale, regardless of whether the sale is mercantile in nature.

2005 Act 25 provided an exemption for sales of taxable services and tangible personal property physically transferred to a purchaser as a necessary part of certain taxable services if the seller and the purchaser are members of the same affiliated group and are eligible to file a single consolidated return for federal tax purposes. Prior to the Supreme Court decision, DOR had considered other transfers of assets between two companies owned by the same parent to be taxable sales. However, based on the *River City* decision, businesses may be able to make certain purchases through out-of-state subsidiaries and avoid paying sales and use taxes. The Senate provision would avert any potential revenue loss associated with this decision.

	Chg. to JFC
GPR-REV	- $2,000,000

Assembly: Direct the Legislative Audit Bureau, in consultation with the Department of Revenue, to review the State Supreme Court's March 8, 2007, decision in the case of *Wisconsin Department of Revenue v. River City Refuse Removal, Inc.*, relating to imposition of the sales and use tax on transfers of goods and services between affiliated businesses. Direct the Audit Bureau to estimate the potential state and local revenue losses associated with the decision, and to present options for the Legislature to consider in order to mitigate any potential revenue loss. Require the Audit Bureau to submit a report with its findings to the Legislature on or before October 1, 2007. → 1-1-2008

Estimate reduced sales tax revenues of $2,000,000 in 2007-09 to reflect refunds and interest payments associated with the case. In addition, the Department of Revenue has estimated that the *River City* decision could potentially result in future revenue losses of approximately $70 million annually. However, this estimate assumes that businesses would restructure their operations in order to avoid the sales and use tax by establishing and using out-of-state affiliates to purchase taxable items such as software, computer equipment, and central office equipment. Because the $70 million annualized estimate is significantly greater than the amount actually associated with the decision, and because it is uncertain as to whether, when, and to what extent, businesses would change their operations to take advantage of the decision,

the Assembly provision would direct the Audit Bureau to develop an estimate of any potential revenue loss and to suggest alternatives for mitigating any such loss.

27. SALES TAX EXEMPTION FOR BIOMASS USED FOR FUEL AND SOLD FOR RESIDENTIAL USE

Senate: No change to Joint Finance.

Assembly: Provide a sales and use tax exemption for biomass used for fuel and sold for residential use. "Biomass" would mean a resource that derives energy from wood or plant material or residue, biological waste, crops grown for use as a resource, or landfill gases. "Biomass" would not include garbage or nonvegetation-based industrial, commercial, or household waste, except that "biomass" would include refuse-derived fuel used for a renewable facility that was in service before January 1, 1998. Provide that the proposal would take effect on the first day of the second month after publication of the budget bill. The estimated fiscal effect is unknown but is not expected to be significant.

28. SALES AND USE TAX EXEMPTION FOR CLAY PIGEONS

Senate: No change to Joint Finance.

Assembly: Modify the sales and use tax exemption for clay pigeons sold to certain shooting facilities, effective July 1, 2007.

Under current law, clay pigeons that are sold to a shooting facility are exempt from the sales and use tax if either of the following apply: (a) the shooting facility is required to pay the tax imposed on its gross receipts from charges for shooting at the facility; or (b) the shooting facility is a nonprofit organization that charges for shooting at the facility but is not required to pay the tax on such charges as they are exempt as occasional sales.

Current law also provides, effective July 1, 2007, a sales and use tax exemption for the sale of admissions by a gun club that is a nonprofit gun organization and that provides safety classes to at least 25 individuals in the calendar year.

As a result of the sales and use tax exemption for gun clubs, effective July 1, 2007, clay pigeons sold to a shooting facility that are currently exempt under "a", above, would become taxable to such a shooting facility if the facility claims the sales tax exemption for gun club membership. The proposal would modify the exemption for clay pigeons to specify that an additional condition under which sales of clay pigeons to a shooting facility would qualify for the exemption would be that the shooting facility is a nonprofit organization that charges for shooting at the facility but is not required to pay the tax on admissions because they qualify for the exemption for nonprofit gun clubs. It is estimated that the provision would have a minimal fiscal effect.

29. LEMON LAW STATUTE OF LIMITATIONS

Senate: No change to Joint Finance.

Assembly: Delete the Joint Finance provisions that would impose a four-year statute of limitations for sales tax refunds with respect to the following: (a) vehicle manufacturers who have refunded such taxes to vehicle lessors or purchasers who have returned their vehicles under a motor vehicle warranty (known as the "lemon law"); and (b) the period during which vehicle lessors and purchasers could request a sales tax refund from DOR when they have obtained from the manufacturer a refund of the purchase price but not the sales tax paid on the vehicle. In addition, delete the provisions that would specify that such vehicle manufacturers, lessors, and purchasers are to receive 9% interest on the sales tax refunded to them under these provisions. The Joint Finance provisions were estimated to result in a minimal increase in tax revenues.

30. CIGARETTE AND TOBACCO PRODUCTS TAX AND REFUND INCREASES

	Chg. to JFC
GPR-REV	- $20,000,000
SEG-REV	20,000,000

Senate: Approve the Joint Finance provisions that would increase the excise tax rates on cigarettes and tobacco products, with a modification in the total amount of cigarette tax revenues to be deposited in the general fund. Under the Joint Finance provisions, DOR would be required to deposit to the general fund no more than $324,000,000 in cigarette tax revenues in 2007-08 and no more than $325,000,000 of such revenues in 2008-09. In each year, all additional cigarette tax revenues would be deposited to the segregated health care quality fund (which would be created under the provisions). The Senate provisions would reduce the cigarette tax revenues to be deposited to the general fund, and correspondingly increase the estimated cigarette tax revenues to be deposited to the health care quality fund, by $10,000,000 in each year.

	Chg. to JFC
GPR-REV	- $40,000,000
SEG-REV	- 506,200,000
GPR	- $20,500,000

Assembly: Delete the Joint Finance provisions that would increase the cigarette tax by $1.25 per pack (from $0.77 to $2.02), and the tobacco products tax from 25% of the manufacturer's established list price to 65.6% of the manufacturer's list price, effective on September 1, 2007, or on the first day of the third month beginning after publication of the budget bill, whichever is later. In addition, delete the provisions that would provide that the resulting increased tax revenues (except for $20,000,000 annually) would be deposited to the health care quality fund. As a result of the deletion of these provisions, estimate the following, compared to the Joint Finance budget: (a) reductions of general fund tax revenues of $20,000,000 in each year; (b) reductions of segregated revenues from the cigarette tax of $237,500,000 in 2007-08 and $229,000,000 in 2008-09; (c) reductions of segregated revenues from the tobacco products tax of $18,200,000 in 2007-08 and $21,500,000 in 2008-09; and (d) reductions in estimated GPR expenses for tribal refunds of cigarette and tobacco products taxes of $10,300,000 in 2007-08 and $10,200,000 in 2008-09.

31. THREE-TIER LIQUOR DISTRIBUTION SYSTEM

Senate: Modify current law with respect to the three-tier intoxicating liquor distribution system (which includes wine and distilled spirits).

Background

Under current law, alcohol beverages are generally distributed to consumers under a three-tier distribution system: the manufacturer may sell only to a wholesaler or rectifier; the wholesaler or rectifier may sell only to a wholesaler or to a retailer; and the retailer may sell only to the consumer. With specific exceptions, no person may sell outside of the three-tier system. With limited exceptions, a manufacturer or rectifier may not hold any direct or indirect interest in a wholesaler, and a manufacturer, rectifier, or wholesaler may not hold any direct or indirect interest in a retailer.

Under current law, DOR is authorized to enter into agreements with other states that allow a winery in one state to ship to individuals in the other state up to 27 liters of wine per year. The wine tax is paid by the wine shipper to the state from which the wine is shipped. Out-of-state wineries shipping into Wisconsin under reciprocity agreements are required to submit annual reports to the state detailing such sales. Currently, Wisconsin has reciprocal agreements with the States of California and Oregon. (However, the reciprocal agreement with Oregon could be rescinded if the Governor of Oregon signs into law legislation passed by the Oregon Legislature at the end of June, 2007, that would remove reciprocal language from Oregon's current wine shipping laws and create a direct shipping permit system.)

Proposal

Eliminate the current provisions that authorize reciprocal wine agreements and, instead, create a new type of permit, a "direct wine shipper's permit," to authorize and regulate direct shipments of wine. Make additional modifications to the regulation of intoxicating liquor as described below.

New Provisions on Direct Wine Shippers' Permits

Authorized Activities. Require DOR to issue direct wine shippers' permits authorizing a permittee to ship wine directly to an individual in this state who is of the legal drinking age, who acknowledges, in writing, receipt of the wine shipped, and who is not intoxicated at the time of delivery. Specify that a signature on the delivery form of the common carrier by a person of legal drinking age would indicate acknowledgement of the delivery in writing.

Annual Permit Fee. Require DOR to charge the following annual fees for each direct wine shipper's permit: (a) for permittees that ship more than 90 liters of wine annually to individuals in this state, $1,000; (b) for permittees that ship between 27 and 90 liters of wine annually to individuals in this state, $500; and (c) for permittees that ship less than 27 liters of wine annually to individuals in this state, $100.

Persons Eligible. Specify that a direct wine shipper's permit may be issued to any person who manufactures and bottles wine on premises covered by: (a) a valid state manufacturer's or rectifier's permit; (b) a state winery permit; or (c) a winery license, permit, or other authorization issued to the winery by any state from which the winery will ship wine into this state.

In addition, provide that a winery located outside of this state is eligible for a direct wine shipper's permit if the following apply: (a) the winery holds a valid Wisconsin business tax registration certificate; and (b) the winery submits to DOR, with any initial application or renewal for a business tax registration certificate or a direct wine shipper's permit, a copy of any current license, permit, or authorization issued to the winery by the state from which the winery will ship wine into this state. In addition, specify the following provisions, notwithstanding general qualifications that otherwise apply for licenses and permits under the alcoholic beverage statutes: (a) natural persons obtaining direct wine shippers' permits are not required to be residents of this state; (b) a person is not required to complete a responsible beverage server training course to be eligible for a direct wine shipper's permit; and (c) corporations or limited liability companies obtaining direct wine shippers' permits are not required to appoint agents.

Annual Report Required. Require a direct wine shipper permittee to submit a report to DOR, by January 31 of each year, on forms furnished by DOR, providing the identity, quantity, and price of all products shipped to individuals in this state during the previous calendar year, along with the name, address, and birth date of each person who purchased such products and each person to whom the products were shipped.

Labels. Specify that containers of wine shipped to an individual in this state under a direct wine shipper's permit must be clearly labeled to indicate that the package may not be delivered to an underage person or to an intoxicated person.

Restrictions on Use of Wine. Provide that no individual may sell wine received under these provisions or use it for a commercial purpose.

Annual Limit. Specify that no individual in this state may receive more than 27 liters of wine annually under these provisions, and no permittee may ship more than 27 liters of wine annually to an individual in this state. The annual limit would not apply to purchases made under a medicinal alcohol permit.

Penalties. Provide that failure to comply with the requirements of these provisions and certain additional provisions specified under the alcoholic beverage tax statutes pertaining to wine shipped directly to individuals in this state (as created under the proposal and described below) would carry a penalty of revocation of the permit by the Secretary of DOR.

Modifications to Alcoholic Beverage Tax Statutes Related to Direct Shipments of Wine

Currently, provisions authorizing DOR to negotiate reciprocal wine agreements with other states are included under the statutes imposing an occupational tax on alcoholic

beverages. The reciprocal wine agreement provisions specify that an agreement may include provisions that this state will tax wine shipped from this state to individuals in another state and that the other state will tax wine shipped to individuals in this state. Under the proposal, the reciprocal wine agreement provisions under the tax statutes would be eliminated and replaced with the following provisions:

a. All wine shipped directly to an individual located in Wisconsin by a person holding a direct wine shipper's permit must be sold with the state's occupational tax on wine included in the selling price. Each person holding a direct wine shipper's permit would be required to file an addendum to the required monthly liquor tax return, on forms furnished by DOR, that provides, at minimum, the identity, quantity, and price of all wine shipped to individuals in this state during the previous calendar month, along with the name, address, and birth date of each person who purchased the wine and a copy of the signature provided by the person of legal drinking age who acknowledged delivery of the wine. DOR must also develop a form for recording an attestation of the delivery person who received the proof of age identification provided at the time of delivery and determined that the recipient was not intoxicated.

b. Any failure of a person holding a direct wine shipper's permit to pay the occupational tax or file the required addendum within 30 days of its due date constitutes grounds for revocation or suspension of the permit. Certain provisions on timely filing with respect to income and franchise taxes also apply to the tax and addendum required under these provisions.

Based on these provisions, a person holding a direct wine shipper's permit would be subject to the occupational tax on intoxicating liquor and associated reporting requirements, recordkeeping, and enforcement provisions.

References to Reciprocal Wine Agreements

In addition, repeal current references to the reciprocal wine agreements under provisions related to manufacturers' and rectifiers' permits, winery permits, out-of-state shippers' permits, and shipments of intoxicating liquor into the state. With respect to out-of-state shippers' permits, replace current provisions providing an exception to requirements that otherwise apply for such permits in the case of wineries in states with reciprocal agreements (when such wineries also satisfy certain additional requirements) with a provision specifying that a winery located out of this state may ship wine into this state as provided under the direct wine shipper's permit provisions and would not be required to obtain an out-of-state shipper's permit.

Out-of-State Shippers' Permits

In addition to repealing references to the reciprocal wine agreements and certain other provisions that would be incorporated into the direct wine shipper's permit provisions, the proposal would make an additional modification to current law. Currently, with the exception

of shipments from a winery in compliance with the exception to the out-of-state shipper's permit requirements described above (and who also meets certain additional requirements), intoxicating liquor may be shipped into this state to a person holding a manufacturer's, rectifier's, wholesaler's, industrial alcohol, or medicinal alcohol permit. The proposal would specify, instead, that intoxicating liquor may be shipped into this state only to a person holding an in-state wholesaler's permit or, in the case of a shipment from an out-of-state manufacturer or rectifier with an out-of-state shipper's permit, to an in-state wholesaler or an in-state manufacturer or rectifier. In contrast to current law, an out-of-state wholesaler would not be permitted to ship to anyone other than an in-state wholesaler, and an out-of state manufacturer or rectifier would not be permitted to ship to anyone other than an in-state wholesaler, manufacturer, or rectifier.

Provisions on Shipments of Intoxicating Liquor into the State

With respect to shipments of intoxicating liquor into the state, the proposal would make certain additional modifications to current law, as described below. Current law provides that, with the exception of shipments from a winery in compliance with the current exception to the out-of-state shipper's permit requirements (and who also meets certain additional requirements) the following provisions apply: (a) no intoxicating liquor may be shipped into this state unless consigned to a person (underline added for emphasis) holding a permit for the sale of intoxicating liquor, other than a retail "Class B" permit (which allows retail sales for both on- and off-premises consumption); and (b) no common carrier or other person may transport into and deliver within this state any intoxicating liquor unless it is consigned to a person holding a permit for the sale of intoxicating liquor, other than a retail "Class B" permit. Any common carrier violating "b" is required to forfeit $100 for each violation.

The proposal would replace the references to the reciprocal wine agreements with references to the proposed direct wine shippers' permits, but would retain the penalty of $100 for each violation by common carriers. In addition, the proposal would modify the references to person (where underlined, above) as follows:

a. The reference to person described under "a" would be replaced with a reference to a person holding an in-state intoxicating liquor wholesaler's permit or, in the case of a shipment from a manufacturer or rectifier with an out-of-state shipper's permit, to a person holding an in-instate manufacturer's or rectifier's permit or an in-state wholesaler's permit. Under the proposal, an in-state manufacturer or rectifier could receive shipments from an out-of-state manufacturer or rectifier or an in-state wholesaler, but could no longer receive shipments from an out-of-state wholesaler. In addition, a person with a winery permit would not be able to receive shipments from an out-of-state wholesaler or from a manufacturer or rectifier.

b. The reference to person described under "b" would be replaced with a reference to a person holding an in-state intoxicating liquor wholesaler's permit. Under this provision, a common carrier would only be permitted to deliver intoxicating liquor to a person with an in-state wholesaler's permit (or as provided under the provisions on direct wine shippers'

permits). A common carrier could no longer deliver intoxicating liquor to other types of non-retailer, in-state permittees.

Other Proposed Statutory Changes

Restatement of Legislative Intent. Current law states that the statutes regulating alcoholic beverages are to be construed as an enactment of the Legislature's support for the three-tier system for alcohol beverages production, distribution, and sale that, through uniform statewide regulation, provides this state regulatory authority over the production, storage, distribution, transportation, sale, and consumption of alcohol beverages by and to its citizens, for the benefit of the public health and welfare and this state's economic stability. The proposal would, in addition, state the following: (a) that without the three-tier system, the effective statewide regulation and collection of state taxes on alcoholic beverage sales would be seriously jeopardized; (b) that it is further the intent of the Legislature that without a specific statutory exception, all sales of alcohol beverages shall occur through the three-tier system, from manufacturers to licensed wholesalers to retailers to consumers; and (c) that face-to-face sales at licensed premises directly advance the state's interest in preventing alcohol sales to underage or intoxicated persons.

Face-to-Face Sales on Retail Premises. Under current law, retail "Class B" licenses for intoxicating liquor require the retail sales to be made on the premises specified in the license. While retail sales are generally face-to-face sales, the statutes do not explicitly require face-to-face sales. In addition, certain sales are permitted that are not face-to-face sales, such as the stocking, for the purpose of making sales, of intoxicating liquor in a guest's room in a hotel or a skybox or coliseum suite. In addition, DOR has interpreted current law to permit a caterer with a "Class B" license to supply personnel to dispense alcoholic beverages at catered functions. (However, this does not include authority for a caterer to set up a "cash bar" at such events.) The proposal would specifically provide that a retail license would authorize only face-to-face sales to consumers at the licensed premises. However, the specific exceptions under current law, including DOR's interpretation with respect to caterers, would continue to apply.

Current law does not provide a definition of the term "caterer." The proposal would define the term to mean, for purposes of these provisions, any person holding a state restaurant permit who is in the business of preparing food and transporting it for consumption on premises where gatherings, meetings, or events are held, if the sale of food at each gathering, meeting, or event accounts for greater than 50% of the gross receipts of all the food and beverages served at the gathering, meeting, or event. (This is the same definition used in a separate provision relating to sales of alcohol at the National Railroad Museum.)

Permitted Actions of Manufacturers and Rectifiers. Manufacturers' and rectifiers' permits authorize the manufacture or rectification, respectively, of intoxicating liquor on the premises covered by the permit. In addition, a person holding a manufacturer's or rectifier's permit may manufacture, bottle, or wholesale wine without procuring a winery permit. A manufacturer's or rectifier's permit entitles the permittee to sell intoxicating liquor from the premises described in the permit. Holders of rectifiers' permits may sell intoxicating liquor

rectified by the permittee to retailers without any other permit. No sales may be made for consumption on the premises of the permittee.

The proposal would modify current law such that a person holding a manufacturer's or rectifier's permit would not be authorized to wholesale wine, and would be permitted to sell intoxicating liquor only to licensed wholesalers and to other manufacturers and rectifiers holding a state manufacturer's or rectifier's permit. (In related provisions, the proposal would repeal current provisions that permit a brewer with a manufacturing permit to hold a permit for the wholesale sale of wine). In addition, the following provisions under current law would be repealed: (a) provisions authorizing a holder of a rectifier's permit to sell intoxicating liquor rectified by the permittee to retailers without holding any another permit; (b) provisions related to sales areas in which rectifiers are acting as distributors (which the proposal would not authorize); and (c) provisions related to shipments of wine by a winery operating under a manufacturer's permit to individuals in states with reciprocal wine agreements.

Winery Permits. Under current law, a winery permit authorizes a manufacturing winery to manufacture and bottle wine on the premises covered by the permit for sale at wholesale to other licensees or permittees. The proposal would authorize such sales only to licensed wholesalers, which would prevent a winery with a manufacturing permit from operating as a wholesaler.

Restrictions on Dealings Between Manufacturers, Rectifiers, Wholesalers, and Retailers. The proposal would modify the following provisions under current law pertaining to restrictions between dealings of intoxicating liquor manufacturers, rectifiers, wholesalers, and retailers:

Interest Restrictions. Under current law, with limited exceptions, a manufacturer or rectifier may not hold any direct or indirect interest in a wholesaler, and a manufacturer, rectifier, or wholesaler may not hold any direct or indirect interested in a retailer. The proposal would specify that the same restrictions would apply in the case of a winery and an out-of-state shipper permittee. The proposal would also prohibit an intoxicating liquor retailer from holding any direct or indirect interest in any manufacturer, rectifier, or winery (as is the case under current law with respect to an intoxicating liquor retailer having an interest in a wholesaler).

In addition, the proposal would eliminate most of the exceptions to the current restrictions on manufacturers, rectifiers, and wholesalers having an interest in intoxicating liquor retailers (other than those with licenses for sales for off-premises consumption only), including the exceptions that currently permit the following: (a) a wholesaler to have an interest in a corporation that owns and operates a golf course and leases premises on the golf course to the holder of a retail intoxicating liquor permit if both the wholesaler and retail permits were issued before June 1, 1981; (b) a brewer to hold both an intoxicating liquor retail license for the sale of liquor on brewery premises and a wholesaler's permit for the wholesale sale of wine only; and (c) a manufacturer that is also a brewer to hold a permit for the wholesale sale of wine [and related current law provisions that specify that the certain persons are not prohibited from obtaining a permit to solicit for future sales of intoxicating liquor]. While the current law

exceptions described above would be eliminated, a current exception that allows a winery with a winery permit to have an ownership interest in a retail license for the sale of wine to be consumed by the glass or in opened containers on the premises where sold and also authorizes the sale of wine for off-premises consumption would continue to apply.

In addition, along with the repeal of "b," above, as an exception to the current interest restrictions, the proposal would repeal provisions that currently permit a brewer with a manufacturing permit to also hold a permit for the wholesale sale of wine.

Retail Purchase Credit Restrictions. The proposal would delete a current provision specifying that, for purposes of the restrictions on dealings between manufacturers, wholesalers, and retailers, a person holding both an intoxicating liquor wholesale permit and an intoxicating liquor retail license would be deemed an intoxicating liquor retailer.

Campuses and Retailers to Purchase from Persons Holding Permits. The proposal would remove manufacturers and rectifiers from the persons that a campus or retail licensee or permittee would be permitted to purchase intoxicating liquor from (or to possess intoxicating liquor purchased from).

Records and Reports. The proposal would require DOR to publish and make available on its website a current and regularly updated list of intoxicating liquor permit holders that minimally includes detailed information on the name, address, contact person, and date of permit issuance for every manufacturer and rectifier permit, winery permit, direct wine shipper's permit, wholesaler permit, and out-of-state shipper permit.

Severability. The proposal would specify that if any provision or clause of Chapter 125 on alcoholic beverages or its application to any person or circumstances is held invalid, the invalidity will not affect other provisions or applications of the Chapter that can be given effect without the invalid provision or application, and to this end the provisions of the Chapter are severable.

Assembly: No change to Joint Finance.

32. EXCEPTION TO QUOTAS ON "CLASS B" INTOXICATING LIQUOR LICENSES

Senate: No change to Joint Finance.

Assembly: Amend current law as it applies to an exception for quotas for "Class B" intoxicating liquor licenses for full-service restaurants.

With exceptions, current law imposes certain quotas on retail "Class B" intoxicating liquor licenses. A "Class B" intoxicating liquor license allows retail sales of liquor (including wine) for consumption on the premises, and wine in original containers for consumption off the premises. In addition, if the community elects to, it may permit the sale of not more than four liters of intoxicating liquor (there are no limits on wine), in the original container, for consumption off

the premises. Current state law provides certain exceptions from municipal quotas related to the number of "Class B" licenses that may be issued, including an exception for a full-service restaurant that has a seating capacity of 300 or more persons.

For purposes of the statutes regulating alcoholic beverages, the proposal would create a definition of a "full-service restaurant" as an establishment where meals are prepared, served, and sold to transients or the general public for consumption on the premises and in which the sale of alcoholic beverages accounts for 50% or less of the establishment's gross receipts for the most recent alcoholic beverage licensing year. The current exception to quotas on "Class B" licenses for a full-service restaurant that has a seating capacity of 300 or more persons would be modified to refer, instead, to a full-service restaurant. The proposal would also specify the following:

a. Notwithstanding the general provisions pertaining to a "Class B" license, such a license authorized under these provisions would authorize the retail sale of liquor only on the premises where sold.

b. If such a license were surrendered to the issuing municipality, revoked, or not renewed, the municipality would not be allowed to reissue the license to any applicant other than a full-service restaurant.

c. A person holding a "Class B" license, other than one issued under these provisions, that is surrendered, revoked, or not renewed, would be prohibited from applying for a "Class B" license under these provisions.

The proposal would take effect on the general effective date of the budget bill, and would not have a state fiscal effect.

33. SALES OF BEER, WINE, AND LIQUOR AT THE NATIONAL RAILROAD MUSEUM

Senate: Authorize a caterer with a license to sell beer and/or intoxicating liquor (including wine) at retail for on- and off-premises consumption to sell beer and/or intoxicating liquor at the National Railroad Museum in Green Bay for special events held at the Museum.

Provide that, for purposes of this provision, a "caterer" would mean any person holding a state restaurant permit who is in the business of preparing food and transporting it for consumption on premises where gatherings, meetings, or events are held, if the sale of food at each gathering, meeting, or event accounts for greater than 50% of the gross receipts of all the food and beverages served at the gathering, meeting, or event.

Provide that a Class "B" license for the retail sale of beer for on-premises or off-premises consumption would also authorize a caterer to provide beer, including the retail sale of beer, at the National Railroad Museum in Green Bay during special events held at the museum, notwithstanding the provisions under current law that specify the following: (a) each application for an alcoholic beverage license or permit must specify the premises where the

alcoholic beverages will be sold or stored or both; (b) with certain exceptions, retailers and other alcoholic beverage licensees and permittees must have a separate permit or license covering each location or premises from which deliveries and sales of alcoholic beverages are made or at which alcoholic beverages are stored; and (c) with certain exceptions, owners, lessees, or persons in charge of a public pace may not permit the consumption of alcoholic beverages on the premises of the public place unless the person has an appropriate retail license or permit.

In addition, provide that, notwithstanding current provisions that authorize municipal governing bodies to issue a Class "B" license for the sale of beer from a premise within the municipality to be consumed either on the premises where sold or off the premises, a caterer may provide beer at any location at the National Railroad Museum even though the National Railroad Museum is not part of the caterer's licensed premises and even if the Museum is not located within the municipality that issued the caterer's license. Specify that a caterer providing beer under these provisions would be subject to certain provisions related to premises operated under a Class "B" license as if the beer were provided on the caterer's Class "B" licensed premises.

Specify that these provisions would not authorize the National Railroad Museum to sell beer at retail or to procure or stock beer for purposes of retail sale. In addition, specify that all of the provisions described above with respect to sales of beer by a caterer at the National Railroad Museum in Green Bay would not apply if, at any time, the Museum held a Class "B" license.

Provide parallel provisions related to a "Class B" license to sell intoxicating liquor (which includes wine but does not include beer).

Specify that these provisions, which would not have a state fiscal effect, would take effect on the general effective date of the bill.

Assembly: No change to Joint Finance.

34. REAL ESTATE TRANSFER FEE

Senate: No change to Joint Finance.

	Chg. to JFC
GPR-REV	$124,000,000
SEG-REV	- $266,100,000

Assembly: For conveyances of real estate recorded in 2010-11, reduce the rate of the real estate transfer fee (RETF) from $3 per $1,000 of value transferred to $2 per $1,000 of value, and reduce the state share of the fee from the current rate of 80% to 60% and increase the county share from 20% to 40%. For conveyances recorded during 2011-12 and thereafter, reduce the rate of the RETF to $1 per $1,000 of value, and specify that the counties would retain 100% of the fee. Provide that, with respect to state tax revenues from the RETF through 2010-11, the state share of the RETF would continue to be deposited to the general fund, as under current law.

In addition, delete the Joint Finance provisions specifying that RETF proceeds are to be deposited in the segregated county aid fund, which would be created under the Joint Finance budget.

To pay the RETF, a return is filed and the fee is collected at the county level by the register of deeds when the deed or other instrument of conveyance is submitted for recording. Proceeds from the real estate transfer fee are divided between the state and the county in which it is collected, with the state receiving 80% (or $2.40 per $1,000 of value) and the county retaining 20% (or $0.60 per $1,000 of value). The state share of the RETF, which is deposited to the general fund, is currently estimated at $62,000,000 in each year of the 2007-09 biennium. The county share is estimated at approximately $15,500,000 in each year.

Under the provisions of the budget bill approved by the Joint Committee on Finance, the RETF would be increased from $3.00 to $6.00 per $1,000 of value transferred (with the exception of the fee on conveyances pursuant to a recorded land contract entered into before August 1, 1992). The bill would also increase the percentage of RETF collections retained by the state from 80% to 90% and reduce the county share from 20% to 10%. With these changes, the state's share of the fee would increase from $2.40 to $5.40 per $1,000 of value, while the county share would remain at $0.60 per $1,000 of value. These provisions would be effective with conveyances of real estate recorded on the first day of the second month beginning after publication of the bill. Under the Joint Finance budget, all proceeds from the RETF would be deposited in the segregated county aid fund (which would be created under the Joint Finance budget), rather than to the general fund. The county aid fund would be used to fund aid payments under the shared revenue, county and municipal aid, circuit court support grants, and youth and family aids programs and a transfer to the affordable housing trust fund.

The Assembly proposal would reduce the fee to $2 per $1,000 of value in 2010-11 and to $1 per $1,000 of value in 2011-12 and thereafter. The proposal would also reduce the state share of the fee from 80% to 60% in 2010-11 and eliminate the state share beginning in 2011-12. These changes would result in the state portion of the fee being reduced from $2.40 per $1,000 of value under current law to $1.20 per $1,000 of value in 2010-11 and to $0 in 2011-12. The county portion of the fee would increase from $0.60 per $1,000 of value under current law to $0.80 per $1,000 of value in 2010-11 and to $1.00 per $1,000 of value in 2011-12 and thereafter. In addition, the proposal would eliminate the Joint Finance provisions providing for deposit of RETF collections to the county aid fund.

Compared to the Joint Finance budget, it is estimated that the Assembly proposal would have the following effects: (a) increase general fund tax revenues by $62,000,000 in 2007-08 and 2008-09 and by $31,000,000 in 2010-11; and (b) reduce estimated deposits to the proposed county aid fund by $126,600,000 in 2007-08 and by $139,500,000 in 2008-09 and annually thereafter.

Compared to current law, the Assembly proposal would have no effect on general fund tax revenues in the 2007-08, 2008-09, or 2009-10. However, general fund tax revenues in 2010-11

would be reduced by $31,000,000, compared to current law, and by $62,000,000 in 2011-12 and annually therefore.

Under the Assembly proposal, county revenues from the RETF would be maintained at the current law estimates of $15,500,000 annually in 2007-08, 2008-09, and 2009-10. County revenues from the fee would increase by an estimated $5,200,000 in 2010-11 and $10,300,000 in 2011-12 and annually thereafter.

All of the out-year estimates are in 2008-09 dollars.

Delay Child Care Deduction to tax yr 2009 ok KMH

REVENUE

1. SALES TAX PAPER RETURN FILING FEE

UK LRB 4083/1

Senate: Require the Department of Revenue to promulgate administrative rules for administering the sales and use tax paper return fee, and that such rules limit the fee to $5 per return.

The Joint Finance budget includes a provision that would authorize DOR to impose a filing fee on sales tax returns that are filed on paper. The fee could first be imposed on returns that were filed for the calendar quarter ending on September 30, 2007. According to the administration, the filing fee would be $5 on a paper return and would generate an estimated $2.8 million in general purpose revenue annually.

ok KMH

Assembly: Delete the Joint Finance provision.

	Chg. to JFC
GPR-REV	- $5,600,000

2. INTEGRATED PROPERTY ASSESSMENT SYSTEM/ ELECTRONIC PROPERTY ASSESSMENT MANUAL

Senate: No change to Joint Finance. w/ one year delay ok KMH

Assembly: Delete $2,700,000 GPR and 1.0 GPR position for administering development and implementation of an Integrated Property Assessment System (IPAS). Restore the current requirement that DOR publish and distribute the property assessment manual to assessors, and that the costs of publication and distribution be paid by local assessors and

	Change to JFC Funding	Positions
GPR	- $5,400,000	- 1.00
PR	180,600	1.00
Total	- $5,219,400	0.00

others that request copies of the manual. The current appropriation used to fund costs of publishing the manual and annual expenditure authority of $90,300 PR and 1.0 PR position would also be restored.

3. ADMINISTRATIVE REDUCTION

Senate: No change to Joint Finance.

Assembly: Delete $113,100 and 1.0 position annually by consolidating the Fond du Lac and Milwaukee property assessment supervisor position in the Division of State and Local Finance.

	Change to JFC Funding	Positions
GPR	- $226,200	- 1.00

4. INTERNET POSTING OF DELINQUENT TAX ACCOUNTS

Senate: No change to Joint Finance.

Assembly: Modify current law provisions to require the Department of Revenue to publish on the Internet the identities of taxpayers who owe in excess of $5,000, rather than the current $25,000, in delinquent taxes of any type administered by the Department, including interest, penalties, fees, and costs. The Department would also be required to submit the names of persons who owe delinquent taxes to Internet search engines, and to divulge delinquent tax amounts under provisions authorizing DOR to disclose net tax liabilities.

WORKFORCE DEVELOPMENT

1. CHILD CARE SUBSIDIES AND COST SAVING MEASURES

Senate: No change to Joint Finance.

Assembly: Reduce funding for child care subsidies by $20,236,600 in 2007-08 and $32,364,100 in 2008-09, and implement several cost saving measures as follows:

	Chg. to JFC
FED	- $52,600,700

Attendance-Based Payments. Beginning in 2006-07, the Department of Workforce Development (DWD) implemented a change to attendance policy, effective April 1, 2007. Wisconsin Shares no longer pays the child care provider for absences in child care when attendance is less than half the number of authorized hours per week for enrollment based

authorizations. This change affects parents who have children in licensed family or group programs, or child care run by public schools and have enrollment based authorizations. This measure would result in revised estimated savings of $13,000,000 annually.

In addition, the Joint Finance proposal to require DWD to reimburse licensed child care providers on the basis of the number of authorized hours for a child to receive services from the child care provider and to adjust the number of authorized hours on the basis of a child's history of utilization would be deleted, which would add in costs of $750,000 in 2007-08 and $1,000,000 in 2008-09.

Income Eligibility. Under current law, an individual who is first applying for a child care subsidy must have a family income level no higher than 185% of the federal poverty level (FPL) and remains eligible until the family income level reaches 200% of the FPL. The initial threshold would be reduced to 175% of the FPL, and the recipient would remain eligible until the family income level reaches 190% of the FPL. This provision would apply to individuals who first apply for a child care subsidy, or reapply for a child care subsidy after losing eligibility, on or after the effective date of the bill. The 200% threshold would continue to apply to families who are receiving a subsidy on the bill's effective date. This measure would result in estimated savings of $1,836,600 in 2007-08 and $4,764,100 in 2008-09.

Copayments. DWD increased copayments in March, 2007, by 8%. Copayments would increase again by at least 7.0% in March, 2008, and 3.1% in March, 2009. Copayments are paid by the parents, which results in a savings to the child care subsidies program. Under the schedule used by DWD, the weekly copayment amount varies based on the family's size and income, the number of children in subsidized care, and whether the parent is using licensed or certified child care. The copayment schedule would be modified so that the aggregate amount of copayments increases by the percentages shown above. However, the copayments for individual families could increase by more or less than these percentages. Estimated savings are included in the estimated costs of the program.

In addition, the Joint Finance provision that would have directed DWD to increase copayments by no more than 2.8% per year would be deleted.

Waiting List. Require DWD to implement a prioritized waiting list system for applicants who are otherwise eligible for a child care subsidy, beginning October 1, 2007. An applicant on the waiting list would not receive a child care subsidy until funding became sufficient. However, participants in work components of Wisconsin Works (W-2) would not be subject to the waiting list. This measure would result in estimated savings of $6,150,000 in 2007-08 and $15,600,000 in 2008-09.

Funding for the Wisconsin Shares program would total $325,365,200 in 2007-08 and $322,987,900 in 2008-09.

Finally, impose a limit on the time that an individual could receive child care subsidies for his or her child to 60 months, which would not have to be consecutive. As a result, a family would receive child care subsidies up to 60 months for each child. This provision would affect

families who first apply for child care subsidies after the effective date of the bill. Therefore, no savings are estimated in the 2007-09 biennium.

2. EARNED INCOME TAX CREDIT (EITC)

Senate: No change to Joint Finance. Under the Joint Finance budget, total temporary assistance for needy families (TANF) funding for the earned income tax credit would be $16,125,400 in 2007-08 and $6,664,200 in 2008-09. Total GPR funding would be $75,974,600 in 2007-08 and $90,735,800 in 2008-09.

Assembly: Increase TANF funding for the EITC by $23,429,900 in 2007-08 and $34,935,800 in 2008-09 for total TANF funding for the EITC of $39,555,300 in 2007-08 and $41,600,000 in 2008-09.

	Chg. to JFC
GPR	- $58,365,700
FED	58,365,700
Total	$0

Overall funding for the EITC would not change. As a result, GPR funding for the EITC would be reduced by $23,429,900 in 2007-08 and $34,935,800 in 2008-09. Total GPR funding would be $52,544,700 in the first year and $55,800,000 in the second year.

3. W-2 CASH BENEFITS ALLOCATION

Senate: No change to Joint Finance.

Assembly: Reduce funding by $1,046,500 in 2007-08 and $329,200 in 2008-09 for payments to W-2 participants in subsidized employment positions, trial job subsidies, and caretaker of newborn infant (CNI) grants under current law.

	Chg. to JFC
FED	- $1,375,700

W-2 benefits for the next 24 months of the 2006-2009 W-2 contracts would total $42,980,000 annually.

4. CASE MANAGEMENT SERVICES FOR WISCONSIN WORKS (W-2) PARTICIPANTS

Senate: No change to Joint Finance.

Assembly: Specify that in lieu of placing an individual in a W-2 subsidized employment position, DWD may provide case management services to an individual who applies for a W-2 employment position if DWD determines all of the following: (a) the individual meets the eligibility requirements; (b) the individual is willing to work and has no barriers to employment; (c) the individual is job-ready, based on the individual's employment history or education; and (d) the most appropriate placement for the individual is in unsubsidized employment.

Specify that in determining an appropriate placement for an applicant, a W-2 agency must give priority to placement in unsubsidized employment and providing case management services over placement in a W-2 employment position.

In addition, authorize an individual to petition for review if he or she believes that the provision of case management services in lieu of placement in a W-2 employment position is inappropriate and specify that if it is determined inappropriate, the individual must be placed in the first available W-2 employment position that is appropriate for the individual.

Finally, authorize a custodial parent in a W-2 group in which the other custodial parent is a participant in a W-2 employment position or is receiving case management services to be eligible for employment training and job search assistance services provided by the W-2 agency.

This modification is intended to allow DWD to continue to place unemployed individuals in a "job-ready" category that does not provide cash benefits. A recent court decision indicated that the statutes only permitted placement into a W-2 employment position that receives a cash benefit or be placed in an unsubsidized employment category if employed.

PJK ✓ 10513

R. GH

5. W-2 BENEFITS FOR PREGNANT WOMEN

	Chg. to JFC
GPR	$965,500

Senate: Increase funding by $321,800 in 2007-08 and $643,700 in 2008~~-09 to extend~~ W-2 grants beginning January 1, 2008, in the amount of $673 per month, to women who do not have children and who are in their third trimester of an at-risk pregnancy. Under current law, custodial parents of children who are 12 weeks old or younger are eligible to receive these grants.

Eligibility would be limited to an unmarried woman who: (a) would be eligible for W-2 except that she is not a custodial parent of a dependent child; and (b) is in the third trimester of a pregnancy that is medically verified and shown by medical documentation to be at-risk, such that the woman is unable to participate in the workforce. A W-2 agency could not require such women to participate in any W-2 employment positions. Receipt of a grant under this provision would not constitute participation in a W-2 employment position for purposes of the time limits on program participation.

As under current law, all other pregnant women, whose pregnancy is medically verified and who would be eligible for W-2 except that they are not custodial parents of a dependent child, would be eligible for employment training and job search assistance services provided by a W-2 agency.

These provisions would take effect on January 1, 2008.

Assembly: No change to Joint Finance.

6. REAL WORK, REAL PAY PILOT PROJECT

Senate: No change to Joint Finance.

Assembly: Reduce funding by $42,000 in 2007-08 and $83,000 in 2008-09 to delete the Joint Finance provision that would have established a real work, real pay pilot project.

	Chg. to JFC
FED	- $125,000

7. QUALITY CARE FOR QUALITY KIDS

Senate: No change to Joint Finance.

Assembly: Increase funding by $360,100 annually so that DWD can spend the minimum amount required under federal law (estimated at $10,928,900 annually) on programs to improve the quality and availability of child care. In addition, authorize DWD to determine which programs would receive funding and to allocate the amount of funding for each program. Current quality and availability programs include: (a) the child care scholarship and bonus program; (b) child care resource and referral services; (c) child care licensing activities; (d) the local pass-through program; (e) technical assistance; and (f) the child care information center.

	Chg. to JFC
FED	$720,200

Under the Joint Finance budget, the minimum amount required under federal law for programs to improve the quality and availability of child care would be allocated. However, the Joint Finance budget would have required DWD to allocate at least: (a) $3,475,000 annually for the child care scholarship and bonus program; (b) $1,225,000 annually for child care resource and referral services; and (c) $4,800,600 for child care licensing activities. With the remaining funds, DWD would have the discretion to set the funding level for: (a) the local pass-through program; (b) technical assistance; and (c) the child care information center.

Because the Assembly budget provided base funding of $4,440,500 for child care licensing activities, rather than $4,800,600 annually under the Joint Finance budget, the additional funds of $360,100 annually that would have been spent on child care licensing activities under the Joint Finance budget must be spent on other programs to improve the quality and availability of child care under the Assembly budget.

8. BASE FUNDING FOR TANF RELATED PROGRAMS

Senate: No change to Joint Finance.

Assembly: Reduce funding by $2,464,900 in 2007-08 and $2,519,600 in 2008-09 to maintain base funding for several TANF related programs listed in the table below.

	Chg. to JFC
FED	- $4,984,500

The first column in the table represents the base level of funding for each program. The second and third columns show the total funding provided by the Joint Committee on Finance, and the last two columns show the savings that result from maintaining base funding.

Base Funding for TANF Related Programs

		Joint Finance		Savings	
	Base Funding	2007-08	2008-09	2007-08	2008-09
Day Care Licensing	$4,440,500	$4,800,600	$4,800,600	-$360,100	-$360,100
Child Care State Administration	1,524,900	1,765,600	1,600,300	-240,700	-75,400
Emergency Assistance	4,500,000	6,000,000	6,000,000	-1,500,000	-1,500,000
State Administration	16,422,900	16,670,100	16,868,500	-247,200	-445,600
Child Welfare Safety Services	5,707,200	5,631,300	5,631,300	75,900	75,900
Milwaukee Child Welfare/eWISACWIS	1,317,700	1,510,500	1,532,100	-192,800	-214,400
Total	$33,913,200	$36,378,100	$36,432,800	-$2,464,900	-$2,519,600

Base funding for state administration deletes the specific provision to provide $605,500 annually for certain fraud-prevention and follow-up activities conducted by DHFS and county income maintenance agencies. Instead, these activities would be funded, as they are under current law, from the state administration allocation.

9. FRAUD INVESTIGATION

PJK R.CH

Senate: No change to Joint Finance.

Assembly: Modify the provision that authorizes counties and tribal governing bodies to establish a program to investigate suspected fraudulent activity by W-2 and Wisconsin Shares participants and to recover incorrect payments as a result of fraudulent activity such that the county or tribal governing body retains all amounts recovered as a result of its program during the first three months in which it recovers any amounts. As a result, the county or tribal governing body would pay to DWD all amounts recovered as a result of its program beginning with the fourth month in which it recovers any amounts.

Under the Joint Finance budget, this provision would have required a county or tribal governing body that establishes a fraud investigation program to pay to DWD: (a) 50% of all fraud recoveries during the first month in which any fraud recoveries are made; (b) 66% of all fraud recoveries during the second month in which any fraud recoveries are made; and (c) 100% of all fraud recoveries made after the second month.

10. FEDERAL AND STATE FUNDS FOR CHILD SUPPORT ENFORCEMENT ACTIVITIES

PJK R.CH

Senate: No change to Joint Finance.

Assembly: Reduce funding for child support enforcement state operations by $150,000 GPR in 2007-08. In addition, reduce federal matching funds by $291,200 FED in 2007-08.

	Chg. to JFC
GPR	- $150,000
FED	- 291,200
Total	- $441,200

11. PROOF OF CITIZENSHIP OR LEGAL STATUS FOR PUBLIC ASSISTANCE

PSK R.G.

Senate: No change to Joint Finance.

Assembly: Require an applicant for an assistance program to provide, as a condition of eligibility, documentary proof of citizenship or satisfactory immigration status as specified by rules promulgated by DWD and DHFS, to the extent permitted under federal law. Specify that only a person who is a United States citizen or an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law is eligible for an assistance program.

Require every application for an assistance program to include a certification clause, completed by the welfare worker or other person processing the application, which certifies that he or she has received documentary proof that the applicant is a United States citizen or an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, and states the nature of the documentary proof. Require any person who processes the application and falsely certifies receipt of the documentary proof to pay a forfeiture of $250 for each false certification. Specify that the notice of the penalty must be printed on the application directly below the certification clause.

Assistance programs would include: (a) relief block grants; (b) W-2; (c) Wisconsin Shares child care subsidies; (d) child support; (e) FoodShare; (f) funeral, burial, and cemetery expenses; (g) the disease aids program; and (h) other public assistance programs. However, assistance programs would not include: (a) Medicare; (b) medical assistance; (c) Badger Care; (d) Senior Care; and (e) federal supplemental security income payments.

This provision would take effect on the first day of the seventh month beginning after enactment of the bill.

Under current federal law, applicants for W-2, FoodShare, relief block grants, and funeral, burial, and cemetery expenses must be United States citizens or lawful aliens, and this information must be verified. This provision would require the verification to be documentary proof and would require a certification clause that the documentary proof was received.

Other state programs, such as the disease aids program, have no requirements that participants be United States citizens or lawful aliens. Rather, the applicant is required to be a Wisconsin resident. This provision would now require applicants for these programs to be United States citizens or lawful aliens, require documentary proof of their status, and require the certification clause that the proof was received.

Under current federal law, the children of applicants for child care subsidies must be United States citizens or lawful aliens, rather than the person who applies for child care subsidies. Because this provision is limited to what federal law permits, this provision would not apply to the child care subsidy program to the extent that the child for whom child care subsidies are paid are United States citizens or lawful aliens, while his or her parents are not.

Under current law, there is no requirement that individuals who receive child support services be United State citizens or lawful aliens. However, federal regulations do not permit child support agencies to close child support cases solely because a parent is not a United States citizen. Child support agencies currently establish paternity cases and child support orders and enforce child support orders where the child is a United States citizen, but the parents are not. This provision would prohibit child support enforcement activities in cases where the person applying for child support services, the custodial parent, is not a United States citizen or lawful alien, regardless of the status of the child.

12. ELIMINATE FUNDING FOR NEW GRANTS AND PROGRAMS

Senate: No change to Joint Finance.

Assembly: Reduce funding by $550,000 in 2007-08 and $500,000 in 2008-09 to eliminate the following grants and programs that were included in the Joint Finance budget: (a) youth summer jobs programs in first class cities (-$500,000 annually); (b) a grant to the Racine Young Women's Christian Association (YWCA) for start-up costs for a job skills training program (-$25,000 in 2007-08); and (c) a grant to the Racine County Workforce Development Board to develop a comprehensive community-wide workforce development plan that addresses specific challenges in Racine County (-$25,000 in 2007-08).

	Chg. to JFC
GPR	- $1,050,000

13. YOUTH APPRENTICESHIP PROGRAM

Senate: No change to Joint Finance.

Assembly: Maintain base funding of $1,100,000 annually for the youth apprenticeship program. Compared to the Joint Finance budget, funding would be decreased by $412,600 in 2007-08 and $1,216,800 in 2008-09, and 2.0 positions would be eliminated in each year. The youth apprenticeship program is a two-year program that combines academic and technical instruction with mentored on-the-job learning for high school students.

	Change to JFC	
	Funding	Positions
GPR	- $1,629,400	- 2.00

14. VOCATIONAL REHABILITATION -- APPROPRIATION CHANGE

Senate: No change to Joint Finance.

Assembly: Delete the Joint Finance provision that would have modified the GPR vocational rehabilitation general program operations; purchased services for clients appropriation from an annual appropriation to a continuing appropriation.

Under current law, the appropriation is an annual appropriation, but permits the transfer of funds between fiscal years. Any funds appropriated for a particular fiscal year that are transferred to the next fiscal year and are not spent or encumbered by September 30 of that next fiscal year lapse to the general fund on October 1.

15. REGULATION OF TRAVELING SALES CREWS

Senate: Require DWD to regulate traveling sales crews, beginning the first day of the 12th month after publication of the bill. A traveling sales crew involves two or more individuals who are employed as salespersons, or in related support work, who travel together in a group, and who are absent overnight from their permanent places of residence for the purpose of selling goods or services to consumers from house to house, on any street, or in any other place that is open to the public. Two or more individuals who are traveling together for the purpose of participating in a trade show or convention, or two or more immediate family members who are traveling together for the purpose of selling goods or services would not constitute a traveling sales crew. No additional funding or positions would be provided to DWD to regulate traveling sales crews.

Regulation of traveling sales crews would include the following provisions:

Certificate of Registration

Require any person to first obtain a certificate of registration from DWD in order to employ, offer to employ, or otherwise recruit an individual to work as a traveling sales crew worker. Require a person to complete an application for registration, meet minimum requirements for issuance of a certificate of registration as specified by rules promulgated by DWD, and pay a registration fee determined by rules promulgated by DWD in order to obtain a certificate of registration. A certificate of registration would be valid for 12 months unless suspended, restricted, or revoked, and would be nontransferable. Authorize a registrant to renew a certificate of registration by submitting an application and paying the registration fee not less than 30 days before the expiration date of the certificate of registration. The certificate of registration would not expire if the registrant is on active military duty when the certificate is due to expire.

Require a registrant and all employees, agents, or representatives of a registrant who supervise or transport traveling sales crew workers to carry at all times, while engaging in traveling sales crew activities, a copy of the certificate of registration and to exhibit that copy upon the request of any deputy of DWD, law enforcement officer, or person with whom the registrant, employee, agent, or representative is doing business. Failure to exhibit the copy upon request would be prima facie evidence of a violation of this provision.

Application for Certificate of Registration

Information. Require a person to complete an application that contains all of the following information in order to obtain a certificate of registration:

a. The name of the applicant, the address and telephone number of the applicant's principal place of business, and, if the applicant is engaged in sales activities on behalf of a principal, the name, address, and telephone number of the principal.

b. If the applicant is a corporation, the date and place of the applicant's incorporation, or, if the applicant is a limited liability company, the date and place of the applicant's organization.

c. The names and permanent home addresses of the proprietors, managing partners, managers, or principal officers of the applicant, together with proof of identification of those individuals, which may be in the form of a birth certificate, a valid operator's license that contains a photograph of the license holder, or an identification card that contains a photograph of the person identified.

d. The names, permanent home addresses, motor vehicle operator's license numbers, and dates of birth of all employees, agents, or representatives of the applicant who supervise or transport traveling sales crew workers, together with proof of identification of those individuals.

e. Information regarding the conviction record of all proprietors, managing partners, managers, or principal officers of the applicant, and of all employees, agents, or representatives of the applicant who supervise or transport traveling sales crew workers, and information regarding any violation by any those individuals of fraudulent representation, unfair billing for consumer goods or services, or unfair methods of competition and unfair trade practices.

f. The social security number or federal employer identification number of the applicant.

g. The type of sales activities to be performed and the nature of the goods or services to be sold by the traveling sales crew workers of the applicant. If the goods to be sold are magazine subscriptions, the applicant must provide the names, addresses, and telephone numbers of the publishers of those magazines.

h. A statement identifying each motor vehicle that would be used to transport the applicant's traveling sales crew workers, including the type and license number of each motor vehicle, and documentation showing that each motor vehicle is in compliance with all state and federal safety standards that are applicable to the motor vehicle.

i. A statement indicating whether the duties of the applicant's traveling sales crew workers would include the storage, handling, or transportation of hazardous materials, as defined under federal law, or may result in any other exposure of those workers to hazardous

materials, and, if so, documentation showing that the applicant is in compliance with all state and federal safety standards that are applicable to the storage, handling, and transportation of the hazardous materials.

j. Any document required by DWD to prove that the applicant has complied with the proof of financial responsibility requirement, the disclosure requirement, and the proof of insurance requirement, discussed in further detail below.

k. Any other information that DWD considers relevant to the protection of the health, safety, and welfare of the traveling sales crew workers employed by the applicant.

Investigation. Require DWD to investigate an applicant, upon receipt of the application and payment of the registration fee, to determine whether the applicant is qualified to receive a certificate of registration. The investigation would have to include a criminal history search by the Department of Justice (DOJ) of all proprietors, managing partners, managers, or principal officers of the applicant, and of all employees, agents, or representatives of the applicant who supervise or transport traveling sales crew workers. The investigation would also have to include a search by DWD to determine whether any of those individuals has committed fraudulent representation, unfair billing for consumer goods or services, or unfair methods of competition and unfair trade practices.

Authorize DWD to require the person being investigated to be fingerprinted on two fingerprint cards, each bearing a complete set of the person's fingerprints, if the person being investigated is, or at any time within the five years preceding the date of the application has been, a nonresident of Wisconsin, or if DWD determines that any information obtained from the criminal history search provides a reasonable basis for further investigation. Authorize DOJ to provide for the submission of the fingerprint cards to the Federal Bureau of Investigation (FBI) for the purposes of verifying the identification of the person and obtaining the person's criminal conviction record. Require DWD to keep all information received from DOJ and FBI confidential.

Issuance. Require DWD to issue a certificate of registration to the applicant after completing the investigation, determining that the applicant meets the minimum requirements for issuance, and being satisfied that the applicant would comply with all requirements and rules.

Denial, Suspension, Revocation, Restriction, or Refusal. Authorize DWD to deny, suspend, revoke, restrict, or refuse to renew a certificate of registration if DWD determines that any of the following apply:

a. The applicant or registrant is not the real party in interest with respect to the application or certificate of registration, and the real party in interest has previously been denied issuance or renewal of a certificate of registration, has had a certificate of registration suspended, revoked, or restricted, or is not qualified to receive a certificate of registration.

b. A proprietor, managing partner, manager, or principal officer of the applicant, or an employee, agent, or representative of the applicant who supervises or transports traveling sales crew workers has been convicted of a disqualifying offense within the five years preceding the date of the application.

c. The applicant or registrant has made a material misrepresentation or false statement in the application for the certificate of registration.

d. The applicant or registrant has failed to notify DWD of any change in the information submitted in the application for a certificate of registration as required under these provisions.

e. The applicant or registrant has failed to maintain proof of financial responsibility; failed to comply with the written disclosure statement requirements; failed to pay wages; failed to provide a required statement; failed to keep, preserve, or furnish records; violated a safety standard; failed to maintain insurance coverage; engaged in a prohibited practice as described in further detail below; employed a traveling sales crew worker without a proper permit; failed to pay a penalty imposed or to comply with an order DWD imposed as a result of a violation; or otherwise failed to comply with this law or rules.

For purposes of item "b" above, a disqualifying offense would include violations of underage drinking, falsifying proof of age, allowing the consumption of alcohol without a permit, manufacturing or delivering drug paraphernalia, or delivering drug paraphernalia to a minor if the violation of one or more of these offenses was committed in connection with, or incident to, any traveling sales crew activities.

Disqualifying offenses would also include violations involving homicide; felony battery; mayhem; sexual assault; reckless or negligent injury; injury by intoxicated use of a vehicle; false imprisonment; taking hostages; kidnapping; arson; burglary; threats to injure, accuse of crimes, or communicate derogatory information; robbery; soliciting or keeping a place of prostitutes; bribery; and certain crimes against children.

If the value of the property misappropriated is $2,500 or more, then disqualifying offenses would include certain theft, fraud, operating a motor vehicle without the owner's consent, issuing worthless checks, and computer crimes.

Finally, disqualifying offenses would include any violation of fraudulent representation, unfair billing for consumer goods or services, or unfair methods of competition and unfair trade practices.

Change of Information. Require a registrant to notify DWD if any change occurs in any of the information submitted to DWD for an application for a certificate of registration within 30 days after the change occurs.

Employer Requirements

Financial Responsibility. Require an applicant to establish proof of ability to pay any compensation owed to a traveling sales crew worker employed by the applicant and any penalties that could be imposed. Require the applicant to prove its ability to pay by maintaining one of the following commitments in an amount approved by DWD, but not less than $10,000, and in a form approved by DWD: (a) a bond; (b) a certificate of deposit; (c) an escrow account; or (d) an irrevocable letter of credit. Require the commitment to be established in favor of, or made payable to, DWD for the benefit of the state and any traveling sales crew worker who does not receive the compensation earned by the worker. Require the applicant to file with DWD any agreement, instrument, or other document necessary to enforce the commitment against the applicant or any relevant third party, or both.

Disclosure Statement. Require the employer to provide an individual with a written disclosure statement of the terms of employment at the time the individual is offered employment as a traveling sales crew worker or is otherwise recruited to work as a traveling sales crew worker. Require the employer and the individual to sign the written disclosure statement if the individual accepts the offer of employment. Require the written disclosure statement to include all of the following information:

a. The place or places of employment, stated with as much specificity as possible.

b. The compensation, including wage rates, commissions, bonuses, and contest awards, to be paid.

c. The type or types of work on which the individual may be employed.

d. The pay period and the manner in which compensation would be paid.

e. The number of days per week and hours per day that the individual may be required to engage in sales activities or related support work.

f. The nature and frequency of any employment-related meetings that the individual may be required to attend, the time of day of those meetings, and how compensation would be paid for attendance at those meetings.

g. The period of employment, including the approximate beginning and ending dates of employment.

h. A description of the board, lodging, and other facilities to be provided by the employer to the individual and any costs to be charged to the individual for those facilities.

i. A description of the transportation to be provided by the employer to the individual, and, if the employment involves the storage, handling, or transportation of hazardous materials or involves any other exposure to hazardous materials, a description of the hazardous materials.

j. Whether worker's compensation would be provided and, if so, the name and telephone number of the employee, agent, or representative of the employer to whom a notice of a claim for worker's compensation must be provided and the time period within which that notice must be provided.

Require the employer to comply with the terms of a disclosure statement, and authorize the employer to change the terms of a disclosure statement. However, any change to the terms of a disclosure statement would not be effective until a supplemental disclosure statement is signed by both the employer and the traveling sales crew worker, and any change would apply prospectively only.

Payment of Compensation. Require an employer to pay all compensation earned by a traveling sales crew worker on regular paydays designated in advance by the employer, but in no case less often than semimonthly. Require compensation to be paid in U.S. currency or by check or draft.

Authorize an employer to deduct, from a traveling sales crew worker's compensation, the cost of furnishing board, lodging, or other facilities to the worker if the board, lodging, or other facilities are customarily furnished by the employer to the traveling sales crew workers. Specify that the amount deducted would not exceed the fair market value of the board, lodging, or other facilities and would not include any profit to the employer. Require the traveling sales crew worker to authorize the deduction by signing a written disclosure statement that includes a description of the board, lodging, and other facilities to be provided and any costs to be charged to the worker for those facilities.

Require the employer to provide a written statement itemizing the amount of gross and net compensation paid to the worker and the amount of, and reason for, each deduction from the amount of gross compensation with each payment of compensation to a traveling sales crew worker. Require an employer to keep records of the information specified with respect to each traveling sales crew worker, to preserve those records for three years after the worker leaves the employ of the employer, and to furnish those records to DWD upon request.

Authorize a traveling sales crew worker who is owed compensation to file a wage claim with DWD or bring an action without first filing a wage claim with DWD.

Worker Safety. Require an employer of a traveling sales crew worker to maintain and operate, or cause to be maintained and operated, any motor vehicle used to transport a traveling sales crew worker in compliance with all state and federal safety standards that are applicable to the maintenance and operation of the motor vehicle, including any additional safety standards relating specifically to the transportation of traveling sales crew workers prescribed by rules promulgated by DWD. In prescribing additional safety standards, require DWD to consider all of the following: (a) the types of motor vehicles that are commonly used to transport traveling sales crew workers; (b) the safe passenger-carrying capacity of those motor vehicles; (c) the extent to which a proposed safety standard would cause an undue burden to traveling sales crew employers; and (d) any safety standards prescribed by the

federal Secretary of Transportation that are applicable to the maintenance and operation of a motor vehicle that is commonly used to transport traveling sales crew workers.

Require the employer to ensure that any hazardous materials are stored, handled, and transported, and that the traveling sales crew worker is trained in the safe storage, handling, and transportation of hazardous materials, in accordance with all applicable state and federal safety standards, including any additional safety standards prescribed by rules promulgated by DWD. In prescribing additional safety standards, require DWD to consider all of the following: (a) the types of hazardous materials that are included in products commonly sold by traveling sales crews; (b) the extent to which a proposed safety standard would cause an undue burden to traveling sales crew employers; and (c) any safety standards prescribed by the federal Secretary of Transportation or by the federal Occupational Safety and Health Administration that are applicable to the storage, handling, and transportation of hazardous materials by a traveling sales crew worker or to any other exposure of a traveling sales crew worker to hazardous materials.

Insurance Coverage. Require the employer to have a policy of insurance that insures the employer, in an amount prescribed by rule promulgated by DWD, against liability for damages to persons and property arising out of the ownership or operation by the employer or by any employee, agent, or representative of the employer of a motor vehicle that is used to transport a traveling sales crew worker. In addition, require the employer to have a policy of insurance that insures the employer, in an amount prescribed by rule promulgated by DWD, against liability for damages to persons and property arising out of any negligent act or omission of the employer or of any employee, agent, or representative of the employer. Finally, require the employer to provide worker's compensation coverage for its employees if the employer is required to do so under current law.

Prohibited Practices, Enforcement, and Penalties

Prohibited Practices. Prohibit an employer of a traveling sales crew worker and an employee, agent, or representative of that employer who supervises or transports traveling sales crew workers from doing the following:

a. Employing or permitting to work as a traveling sales crew worker a person under 18 years of age or employing or permitting to work as a traveling sales crew worker a person 18 years of age or over who has been adjudged incompetent without the permission of the person's guardian.

b. Requiring a traveling sales crew worker to engage in any in-person sales or solicitation before 9:00 a.m. or after 9:00 p.m.

c. Considering a traveling sales crew worker to be an independent contractor rather than an employee.

d. Requiring a traveling sales crew worker to purchase any goods or services solely from the employer or to pay any of the employer's business expenses, except as permitted for board, lodging, or other facilities.

e. Abandoning a traveling sales crew worker who is unable to work due to illness or injury or who is discharged from employment, for reasons other than misconduct, without providing for the return of the traveling sales crew worker to his or her permanent place of residence.

f. Abandoning a traveling sales crew worker who has been arrested and is being held in custody for failing to exhibit the identification card upon request as required under these provisions or for a violation of some local ordinance regulating that conduct.

g. Requiring a traveling sales crew worker to relinquish custody of any of his or her personal property to the employer, to any employee, agent, or representative of the employer who supervises or transports traveling sales crew workers, or to any other traveling sales crew worker of the employer.

h. Prohibiting or restricting a traveling sales crew worker from contacting any family member, friend, or other person while traveling with a traveling sales crew.

i. Intentionally inflicting, or threatening to inflict, bodily harm on a traveling sales crew worker or damage to the property of a traveling sales crew worker as a means of discipline or motivation.

j. Advising or counseling a traveling sales crew worker to make false representations to a person to whom he or she is offering goods or services concerning his or her motivation for selling those goods or services.

k. Discharging or discriminating against any person for opposing a prohibited practice.

Enforcement and Penalties. Subject any person engaging in traveling sales crew activities, or employing or permitting the employment of any individual as a traveling sales crew worker, in violation of these provisions, any rule promulgated for these provisions, or any order issued under these provisions, or that hinders or delays DWD or any law enforcement officer in the performance of their duties under these provisions to a forfeiture not less than $25 nor more than $1,000 for each day of a first offense, or to a fine not less than $250 nor more than $5,000 for each day or to imprisonment not more than 30 days, or both, for a second or subsequent offense. An offense would be a second or subsequent offense if it occurred within five years of the first offense, as measured from the dates the violations initially occurred.

In addition, specify that any person that employs or permits the employment of any individual as a traveling sales crew worker in violation of these provisions would be liable, in addition to wages paid, to pay each individual affected an amount equal to twice the regular

rate of pay as liquidated damages for all hours worked in violation per day or per week, whichever is greater.

Finally, authorize DWD to refer violations of these provisions or of any rules related to these provisions for prosecution by DOJ or the district attorney of the county in which the violation occurred.

Child Support and Delinquent Taxes

Specify that DWD must require each applicant for a certificate of registration to provide a social security number, if the applicant is an individual, or a federal employer identification number, if the applicant is not an individual, when initially applying for or applying to renew the certificate of registration. This is consistent with state law regarding other state-issued licenses, certifications, and credentials.

Current law also requires licensing agencies and credentialing boards to deny, suspend, restrict, refuse to renew, or otherwise withhold a license or certificate for individuals who owe past-due support or who fail to comply with subpoenas or warrants relating to paternity or child support proceedings or who owe back taxes. This provision would add a certificate of registration for traveling sales crews to the list of licenses, credentials, certificates, or registrations that may be denied, suspended, or restricted.

Traveling Sales Crew Worker Permits

Prohibit an individual from being employed or permitted to work as a traveling sales crew worker unless the employer of the individual first obtains from DWD a traveling sales crew worker permit for the individual and the individual first obtains from DWD an identification card. Require the worker permit and the identification card to be in a form prescribed by DWD, which must include, at a minimum, the name and permanent home address of the traveling sales crew worker and the name, address, and phone number of his or her employer.

Require the employer and all employees, agents, or representatives who supervise or transport traveling sales crew workers to carry a copy of the worker permit at all times for each traveling sales crew worker and to exhibit that copy upon request of any deputy of DWD, law enforcement officer, or person with whom the employer, employee, agent, or representative is doing business.

Require a traveling sales crew worker to carry the identification card at all times while engaged in traveling sales crew activities and to exhibit that card upon request of any deputy of DWD, law enforcement officer, or person with whom the traveling sales crew worker is doing business.

Specify that failure to exhibit a copy of the permit or identification card is prima facie evidence of a violation of this provision.

Require the employer to: (a) keep a copy of the permit for each traveling sales crew worker for at least three years after the traveling sales crew worker leaves the employ of the employer and allow DWD to inspect the permits upon request; (b) keep a list of names of all cities, villages, or towns where traveling sales crew workers engaged in traveling sales crew activities within the last three years and allow DWD to inspect the list upon request; and (c) provide a list of all cities, villages, or towns where the employer intends to employ traveling sales crew workers in traveling sales crew activities, upon the request of DWD, for the six-month period beginning on the date of DWD's request.

Require the employer to obtain a stamp or endorsement on a traveling sales crew worker's permit from the clerk of the city, village, or town before the employer may permit a traveling sales crew worker to engage in traveling sales crew activities in that city, village, or town. Require the employer, once the stamp or endorsement is obtained, to provide notice that the traveling sales crew workers would be engaging in traveling sales crew activities in that city, village, or town to the following: (a) the local police department, if the city, village, or town has a police department; or (b) the sheriff of the county where the city, village, or town is located, if the city, village, or town does not have a police department. In addition, require clerks of cities, villages, and towns to stamp or endorse traveling sales crew worker permits at the request of an employer.

Require law enforcement officers of counties, cities, villages, and towns to assist DWD in enforcing these provisions by questioning individuals seen engaging in traveling sales crew activities and reporting to DWD all cases of individuals apparently engaging in traveling sales crew activities in violation of these provisions.

Rules Related to these Provisions

Require DWD to promulgate rules to implement these provisions, which must include all of the following: (a) a fee for obtaining a certification of registration, which must be based on the cost of issuing certificates of registration; (b) minimum requirements for the issuance of a certificate of registration; (c) safety standards relating to the transportation of traveling sales crew workers, the storage, handling, and transportation of hazardous materials by traveling sales crews and any other exposure of a traveling sales crew worker to hazardous materials, and the training of traveling sales crews in the storage, handling, and transportation of hazardous materials; and (d) the amount of liability insurance that an employer must have in force.

Require DWD to submit the rules in proposed form to the Legislative Council staff no later than the first day of the sixth month beginning after the effective date of the bill. DWD would not be required to prepare an economic impact report for these rules.

Non-applicability and Non-preemption

Non-applicability. Specify that these provisions do not apply to the employment of a person in a fund-raising sale for a nonprofit organization, a public school, or a private school.

Non-preemption. Specify that these provisions do not preempt a county, city, village, or town from enacting a local ordinance regulating traveling sales crew activities. Require the local ordinance to be at least as strict as the regulation of conduct under these provisions to the extent that the local ordinance regulates the same conduct.

Assembly: No change to Joint Finance.