



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Do Not Gen

1 AN ACT relating to: state finances, collective bargaining for public employees,
2 compensation and fringe benefits of public employees, ^{the} state civil service
3 system, ^{the} Medical Assistance program, sale of certain facilities, granting bonding
4 authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

COLLECTIVE BARGAINING

Under current law, municipal employees have the right to collectively bargain over wages, hours, and conditions of employment under the Municipal Employment Relations Act (MERA), and state employees have the right to collectively bargain over wages, hours, and conditions of employment under the State Employment Labor Relations Act (SELRA). This bill changes MERA and SELRA with respect to all employees except employees who are certain protective occupation participants under the Wisconsin Retirement System or under a county or city retirement system (public safety employees). This bill limits the right to collectively bargain for all employees who are not public safety employees (general employees) to the subject of base wages. In addition, unless a referendum authorizes a greater increase, any general employee who is part of a collective bargaining unit is limited to bargaining over a percentage of total base wages increase that is no greater than the percentage change in the consumer price index. This bill also prohibits municipal employers from collectively bargaining with municipal general employees in matters that are not permitted under MERA.

all Under SELRA and MERA, a collective bargaining unit elects a labor organization as its representative once a majority of the employees in that collective bargaining unit who are actually voting votes for that labor organization; that labor organization remains the representative unless a percentage of members of the collective bargaining unit supports a petition for a new election and subsequently votes to decertify the representative. This bill requires an annual certification election of the labor organization that represents each collective bargaining unit containing general employees. If, at the election, less than 51 percent of the actual employees in the collective bargaining unit vote for a representative, then, at the expiration of the current collective bargaining agreement, the current representative is decertified and the members of the collective bargaining unit are nonrepresented and may not be represented for one year. This bill requires an initial certification election for represented state general employees in April 2011 for represented school district employees in the first May following the termination of their current collective bargaining agreements, and for other represented municipal general employees in the first December following the termination of their current collective bargaining agreements.

Currently, except for an initial collective bargaining agreement, the terms of collective bargaining agreements are generally two years for state and municipal employees, and current law does not prohibit collective bargaining agreements from being extended. This bill limits the term for general employees to one year and prohibits the extension of collective bargaining agreements.

Current law provides that state and municipal employees who are represented by a labor organization have the organization dues deducted from their salaries. Except for salary deductions for public safety employees, this bill prohibits the salary deductions for labor organization dues. This bill also allows a general employee to refrain from paying dues and remain a member of a collective bargaining unit.

Under current law, University of Wisconsin (UW) System employees, employees of the UW Hospitals and Clinics Authority, and certain home care and child care providers have the right to collectively bargain over wages, hours, and conditions of employment. This bill eliminates the rights of these employees to collectively bargain.

PUBLIC SECTOR RETIREMENT SYSTEMS

Currently, employer and employee required contributions, and the earnings on these contributions, fund the cost of providing retirement annuities to all public employees who are covered under the Wisconsin Retirement System (WRS). Employer required and employee required contribution rates are set on an annual basis. This bill provides that the employee required contribution rate for general participating employees and for elected and executive participating employees must equal one-half of all actuarially required contributions, as determined by the Employee Trust Funds Board. For protective occupation employees, the bill provides that the employee required contribution rate must equal the percentage of earnings paid by general participating employees.

Current law also requires the employer to pay all of the employer required contributions, but permits the employer to also pay all or part of the employee

required contributions. This bill provides that an employer may not pay any of the employee required contributions under the WRS or under an employee retirement system of a first class city or a county having a population of 500,000 or more.

Currently, when a WRS participant terminates employment and becomes eligible for a retirement annuity, assuming the participant does not receive a money purchase annuity, the amount of the annuity is determined by multiplying the participant's final average earnings by the participant's years of creditable service and by a percentage multiplier. For a protective occupation participant, the multiplier is either 2 percent or 2.5 percent, depending on whether the person is covered by social security. For elected officials and executive participating employees, the multiplier is 2 percent. For all other participants in the WRS, the multiplier is 1.6 percent. This bill decreases the multiplier for elected officials and executive participating employees from 2 percent to 1.6 percent for creditable service that is performed on or after the bill's effective date.

Under current law, state employees become participating employees in the WRS if they are expected to work at least one-third of what is considered full-time employment by the Department of Employee Trust Funds (DETF) and have an expected duration of employment of one year or more. If a state employee becomes a WRS participating employee, the employee is also entitled to receive health insurance under the Group Insurance Board (GIB) program. A current group of state employees are appointed to state positions as limited term appointments in the state civil service, which are provisional appointments or appointments for less than 1,044 hours per year. This bill prohibits limited term appointments from participating in the WRS, as well as prohibits these employees from receiving health insurance under the GIB program.

This bill also requires the secretary of administration, the director of the Office of State Employee Relations (OSER), ^{and} the secretary of employee trust funds, ~~and the~~ ~~cochairpersons of the Joint Survey Committee on Retirement Systems (JSCRS)~~ to study the WRS. The study must specifically address establishing a defined contribution plan as an option for WRS participating employees; establishing different vesting periods for employer contributions and eligibility for WRS retirement benefits; modifying the supplemental health insurance premium credit program for state employees; and permitting participating employees to not make employee required contributions under the WRS and limiting retirement benefits for these employees to a money purchase annuity. Under the bill, no later than June 30, 2012, the secretary of administration, the director of OSER, the secretary of employee trust funds, ~~and the cochairpersons of JSCRS~~ ^{and} must report their findings and recommendations to the ~~chief clerk of each house of the legislature, for distribution to the legislature.~~ ^{governor} ~~and~~ ^{plan}

PUBLIC SECTOR GROUP INSURANCE

Currently, state employees, as well as employees of public authorities created by the state, receive health care coverage under plans offered by GIB, which plans are assigned to one of three tiers depending on the employee's premium costs. The employer share of premium costs for employees who work more than 1,565 hours a year is an amount not less than 80 percent of the average premium costs under the

various health care coverage plans. The amount for represented employees is subject to collective bargaining and the amount for nonrepresented employees is established in various compensation plans.

This bill provides that the employer may not pay more than 88 percent of the average premium cost of plans offered in the tier with the lowest employee premium cost. For employees who work less than 1,566 hours a year, with exceptions, the employer must pay an amount determined by the director of OSER. Under the bill, the actual employer and employee share of premium costs is established on an annual basis by the director of OSER.

For the remainder of 2011, however, beginning in April 2011, the bill provides that state employees, as well as employees of public authorities created by the state, who work more than 1,565 hours a year shall pay \$84 a month for individual coverage and \$208 a month for family coverage for health care coverage under any plan offered in the tier with the lowest employee premium cost; \$122 a month for individual coverage and \$307 a month for family coverage for health care coverage under any plan offered in the tier with the next lowest employee premium cost; and \$226 a month for individual coverage and \$567 a month for family coverage for health care coverage under any plan offered in the tier with the highest employee premium cost. UW System graduate assistants and teaching assistants must pay half of these amounts. Employees who work less than 1,566 hours a year are required to pay the same amount for health care coverage during 2011 that they were required to pay before the bill's effective date.

The bill further provides that a local government employer who participates in the local government health insurance plan offered by GIB may not participate in the plan if it intends to pay more than 88 percent of the average premium cost of plans offered in any tier with the lowest employee premium cost.

This bill requires the director of OSER and the secretary of employee trust funds to study the feasibility of offering to employees eligible to receive health care coverage under the GIB plans, beginning on January 1, 2013, the option of receiving health care coverage through either a low-cost health care coverage plan or through a high-deductible health plan and the establishment of a health savings account, as described under federal law. The study must also examine the feasibility of requiring state employees to receive health care coverage through a health benefits exchange established pursuant to the federal law and creating a health care insurance purchasing pool for all public employees and individuals receiving health care coverage under the Medical Assistance program. No later than June 30, 2012, the director and secretary shall report their findings and recommendations to the governor.

Current law also provides that GIB may not enter into agreements to modify or expand group insurance coverage in a manner that conflicts with applicable statutes, or DETF rules, or that materially affects the level of premiums required to be paid by the state or its employees or the level of benefits provided under any group insurance coverage. This bill provides that this restriction does not prevent GIB from encouraging participation in wellness or disease management programs under any of its group insurance coverage plans. In addition, the bill provides that this

prohibition does not apply to GIB agreements relating to group insurance coverage for the 2012 and 2013 calendar years.

This bill requires GIB to design health care coverage plans for the 2012 calendar year that, after adjusting for any inflationary increase in health benefit costs, reduces the average premium cost of plans offered in the tier with the lowest employee premium cost by at least 5 percent from the cost of such plans offered during the 2011 calendar year. GIB must include copayments in the health care coverage plans for the 2012 calendar year and may require health risk assessments for state employees and participation in wellness or disease management programs.

This bill requires the secretary of employee trust funds to allocate \$28,000,000, from reserve accounts established in the public employee trust fund for group health and pharmacy benefits for state employees, to reduce employer costs for providing group health insurance for state employees for the period beginning on July 1, 2011, and ending on December 31, 2011.

Current law permits GIB to contract with the Department of Health Services (DHS) and other public or private entities for data collection and analysis services related to health maintenance organizations and insurance companies that provide health insurance to state employees. This bill permits GIB to contract for any other consulting services related to plans it offers.

Currently, the attorney general, or his or her designee, serves on GIB. This bill requires that the attorney general designee on GIB must be an attorney.

This bill provides that if DETF determines that an audit of its employee benefit programs is necessary during the 2011-12 fiscal year, for the purpose of verifying the eligibility of dependents covered under the programs, DETF must submit a written request to the secretary of administration to expend an amount not exceeding \$700,000 to conduct the audit.

STATE GOVERNMENT

STATE CIVIL SERVICE SYSTEM

Under current law, the governor may declare a state of emergency if he or she determines that an emergency exists resulting from a disaster or the imminent threat of a disaster. This bill authorizes a state agency to discharge any state employee who fails to report to work as scheduled for any three working days during a state of emergency or who participates in a strike, work stoppage, sit-down, stay-in, slowdown, or other concerted ~~interruption~~ of operations or services, including specifically purported mass resignations or sick calls. Under the bill, engaging in any of these actions constitutes just cause for discharge.

Currently, the director of OSER has promulgated rules to establish a career executive program. The program provides state agencies with highly qualified executive candidates, provides outstanding administrative employees a broad opportunity for career advancement, and provides for the mobility of such employees among state agencies for the most advantageous use of their managerial and administrative skills. Under current administrative rules, an appointing authority may reassign a career executive employee from one career executive position to another career executive position within the same state agency. This bill permits an appointing authority to reassign an employee in a career executive position to a

UNEXCUSED

OF STATE GOVERNMENT

activities to interrupt the

career executive position in any state agency if the appointing authority in the state agency to which the employee is to be reassigned approves of the reassignment.

This bill increases the number of unclassified division administrators by 35 FTE positions, decreases 36 FTE positions in executive branch agencies, which positions are to be determined by the secretary of administration, expands the definition of "division administrator" to include other managerial positions, and permits the director of OSER to appoint either a deputy director or an executive assistant in the unclassified service.

STATE FINANCE

This bill increases the amount of state public debt that may be contracted to refund any unpaid indebtedness used to finance tax-supported or self-amortizing facilities from \$309,000,000 to \$474,000,000. Such refunded debt must be contracted before July 1, 2011.

This bill reduces executive branch agency lapses and transfers to the general fund for the 2009-11 fiscal biennium that were required under 2007 Wisconsin Act 20 from \$200,000,000 to \$121,000,000, as well as reduces the expenditure authority of the Joint Committee on Finance (JCF) during the 2010-11 fiscal year by \$4,590,400 from its general purpose revenue supplemental appropriation.

This bill requires the secretary of administration, before July 1, 2011, to lapse to the general fund, from executive branch appropriations, an amount equal to \$27,891,400; requires the cochairpersons of the Joint Committee on Legislative Organization to lapse to the general fund, from appropriations to the legislature, an amount equal to \$717,700; requires the governor to lapse to the general fund, from appropriations to the office of the governor, an amount equal to \$37,500; and requires the chief justice of the supreme court to lapse to the general fund, from appropriations to the judicial branch, an amount equal to \$1,153,400. The lapses seek to capture employer savings resulting from increases in state employee payments for health insurance and retirement contributions.

OTHER STATE GOVERNMENT

Currently, this state owns and operates numerous heating, cooling, and power plants that were constructed by the state to provide heating, cooling, and power to state facilities. The Department of Administration (DOA) determines the method of operation of these plants and may delegate this authority to any other state agency that has managing authority for a plant. This bill permits DOA to sell or contract for the operation of any such plant. The bill exempts such sales and contracts from the requirement for approval of the Public Service Commission (PSC) that may otherwise apply under current law. The bill provides that the net proceeds of any sale, after retirement of any outstanding state debt and any necessary repayment of federal financial assistance, is deposited in the budget stabilization fund. The bill also allows DOA, at any time, to petition the PSC to regulate as a public utility any person who purchases or contracts for the operation of any plant under the bill. Under current law, the PSC has regulatory authority over public utilities, including the authority to set rates for utility service.

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Under current law, DHS administers the Medical Assistance (MA) program, which is a joint federal and state program that provides health services to individuals who have limited resources. Some services are provided through programs that operate under a waiver of federal laws related to medical assistance (MA waiver programs). This bill requires DHS to study potential changes to the MA state plan and to waivers of federal law relating to medical assistance for certain purposes, including increasing the cost effectiveness and efficiency of care for the MA program and MA waiver programs and improving the health status of individuals who receive benefits under the MA program or an MA waiver program. If DHS determines, as a result of the study, that revision of existing statutes or rules would be necessary to advance any of the purposes for which the study was conducted, DHS may promulgate rules to implement certain changes, including making certain requirements, modifying benefits, revising provider reimbursement models, developing standards and methodologies for eligibility, and reducing income levels for purposes of determining eligibility. Before promulgating a rule, DHS must submit the proposed rule and any plan developed as a result of the study to JCF for review. DHS must submit an amendment to the state MA plan or request a waiver of federal laws related to medical assistance, if necessary, to the extent necessary to implement any proposal. If the federal Department of Health and Human Services does not allow the amendment or does not grant the waiver, DHS may not put the rule into effect or implement the proposal. To reduce the eligibility income levels to a certain amount, DHS must request a waiver from the secretary of the federal Department of Health and Human Services to permit DHS to have in effect eligibility standards, methodologies, and procedures that are more restrictive than those in place on March 23, 2010. If DHS does not receive approval for the waiver, DHS must reduce the eligibility income levels for MA programs and MA waiver programs to 133 percent of the federal poverty line for adults who are not pregnant and not disabled, as allowed under federal law. DHS may promulgate the rules as emergency rules.

OTHER HEALTH AND HUMAN SERVICES

This bill eliminates the UW Hospitals and Clinics Board, a state agency assigned the single duty to enter into a contractual services agreement with the UW Hospitals and Clinics Authority to provide the services of state employees who are in clerical, blue collar and nonbuilding trades, building trades crafts, security and public safety, and technical collective bargaining units. The bill also transfers all employees of the UW Hospitals and Clinics Board to the UW Hospitals and Clinics Authority.

PUBLIC ASSISTANCE

Reflecting the receipt of emergency contingency funds under the Temporary Assistance for Needy Families (TANF) block grant program, this bill increases by \$37,000,000 the amount of TANF moneys allocated for the earned income tax credit.

This bill will be referred to the Joint Survey Committee on Retirement Systems for a detailed analysis, which will be printed as an appendix to this bill.

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

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

1 **SECTION 1.** 7.33 (1) (c) of the statutes is amended to read:

2 7.33 (1) (c) "State agency" has the meaning given under s. 20.001 (1) and
3 includes an authority created under subch. II of ch. 114 or ch. ~~52~~, 231, 232, 233, 234,
4 or 237.

5 **SECTION 2.** 7.33 (4) of the statutes is amended to read:

6 7.33 (4) Except as otherwise provided in this subsection, each local
7 governmental unit, as defined in s. 16.97 (7), may, and each state agency shall, upon
8 proper application under sub. (3), permit each of its employees to serve as an election
9 official under s. 7.30 without loss of fringe benefits or seniority privileges earned for
10 scheduled working hours during the period specified in sub. (3), without loss of pay
11 for scheduled working hours during the period specified in sub. (3) except as provided
12 in sub. (5), and without any other penalty. For employees who are included in a
13 collective bargaining unit for which a representative is recognized or certified under
14 subch. V ~~or VI~~ of ch. 111, this subsection shall apply unless otherwise provided in a
15 collective bargaining agreement.

16 **SECTION 3.** 13.111 (2) of the statutes is amended to read:

17 13.111 (2) **DUTIES.** The joint committee on employment relations shall perform
18 the functions assigned to it under ~~subchs. subch. V and VI~~ of ch. 111, subch. II of ch.
19 230 and ss. 16.53 (1) (d) 1., 20.916, 20.917, and 20.923 ~~and 40.05 (1) (b).~~

1 **SECTION 4.** 13.172 (1) of the statutes, as affected by 2011 Wisconsin Act
2 (January 2011 Special Session Senate Bill 6), is amended to read:

3 13.172 (1) In this section, "agency" means an office, department, agency,
4 institution of higher education, association, society, or other body in state
5 government created or authorized to be created by the constitution or any law, that
6 is entitled to expend moneys appropriated by law, including the legislature and the
7 courts, and any authority created in subch. II of ch. 114 or subch. III of ch. 149 or in
8 ch. ~~52~~, 231, 233, 234, 238, or 279.

9 **SECTION 5.** 13.48 (13) (a) of the statutes, as affected by 2011 Wisconsin Act
10 (January 2011 Special Session Senate Bill 6), is amended to read:

11 13.48 (13) (a) Except as provided in par. (b) or (c), every building, structure or
12 facility that is constructed for the benefit of or use of the state, any state agency,
13 board, commission or department, the University of Wisconsin Hospitals and Clinics
14 Authority, the Fox River Navigational System Authority, ~~the Wisconsin Quality~~
15 ~~Home Care Authority~~, the Wisconsin Economic Development Corporation, or any
16 local professional baseball park district created under subch. III of ch. 229 if the
17 construction is undertaken by the department of administration on behalf of the
18 district, shall be in compliance with all applicable state laws, rules, codes and
19 regulations but the construction is not subject to the ordinances or regulations of the
20 municipality in which the construction takes place except zoning, including without
21 limitation because of enumeration ordinances or regulations relating to materials
22 used, permits, supervision of construction or installation, payment of permit fees, or
23 other restrictions.

24 **SECTION 6.** 13.62 (2) of the statutes, as affected by 2011 Wisconsin Act
25 (January 2011 Special Session Senate Bill 6), is amended to read:

SECTION 6

1 13.62 (2) "Agency" means any board, commission, department, office, society,
2 institution of higher education, council, or committee in the state government, or any
3 authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 52, 231, 232,
4 233, 234, 237, 238, or 279, except that the term does not include a council or
5 committee of the legislature.

6 **SECTION 7.** 13.94 (4) (a) 1. of the statutes, as affected by 2011 Wisconsin Act ...
7 (January 2011 Special Session Senate Bill 6), is amended to read:

8 13.94 (4) (a) 1. Every state department, board, examining board, affiliated
9 credentialing board, commission, independent agency, council or office in the
10 executive branch of state government; all bodies created by the legislature in the
11 legislative or judicial branch of state government; any public body corporate and
12 politic created by the legislature including specifically ~~the Wisconsin Quality Home~~
13 ~~Care Authority~~, the Fox River Navigational System Authority, the Lower Fox River
14 Remediation Authority, ~~and~~ the Wisconsin Aerospace Authority, and the Wisconsin
15 Economic Development Corporation, a professional baseball park district, a local
16 professional football stadium district, a local cultural arts district and a long-term
17 care district under s. 46.2895; every Wisconsin works agency under subch. III of ch.
18 49; every provider of medical assistance under subch. IV of ch. 49; technical college
19 district boards; every county department under s. 51.42 or 51.437; every nonprofit
20 corporation or cooperative or unincorporated cooperative association to which
21 moneys are specifically appropriated by state law; and every corporation, institution,
22 association or other organization which receives more than 50% of its annual budget
23 from appropriations made by state law, including subgrantee or subcontractor
24 recipients of such funds.

1 **SECTION 8.** 13.95 (intro.) of the statutes, as affected by 2011 Wisconsin Act
2 (January 2011 Special Session Senate Bill 6), is amended to read:

3 **13.95 Legislative fiscal bureau.** (intro.) There is created a bureau to be
4 known as the "Legislative Fiscal Bureau" headed by a director. The fiscal bureau
5 shall be strictly nonpartisan and shall at all times observe the confidential nature
6 of the research requests received by it; however, with the prior approval of the
7 requester in each instance, the bureau may duplicate the results of its research for
8 distribution. Subject to s. 230.35 (4) (a) and (f), the director or the director's
9 designated employees shall at all times, with or without notice, have access to all
10 state agencies, the University of Wisconsin Hospitals and Clinics Authority, the
11 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority,
12 the Lower Fox River Remediation Authority, ~~the Wisconsin Quality Home Care~~
13 ~~Authority~~, the Wisconsin Economic Development Corporation, and the Fox River
14 Navigational System Authority, and to any books, records, or other documents
15 maintained by such agencies or authorities and relating to their expenditures,
16 revenues, operations, and structure.

17 **SECTION 9.** 15.07 (1) (a) 6. of the statutes is repealed.

18 **SECTION 10.** 15.07 (4) of the statutes is amended to read:

19 **15.07 (4) QUORUM.** A majority of the membership of a board constitutes a
20 quorum to do business and, unless a more restrictive provision is adopted by the
21 board, a majority of a quorum may act in any matter within the jurisdiction of the
22 board. This subsection does not apply to actions of the government accountability
23 board, ~~the University of Wisconsin Hospitals and Clinics Board~~, or the school district
24 boundary appeal board as provided in ss. 5.05 (1e), ~~15.96 (2)~~, and 117.05 (2) (a).

25 **SECTION 11.** 15.165 (2) of the statutes is amended to read:

SECTION 11

1 15.165 (2) GROUP INSURANCE BOARD. There is created in the department of
2 employee trust funds a group insurance board. The board shall consist of the
3 governor, the attorney general, the secretary of administration, the director of the
4 office of state employment relations, and the commissioner of insurance or their
5 designees, and 6 persons appointed for 2-year terms, of whom one shall be an insured
6 participant in the Wisconsin Retirement System who is not a teacher, one shall be
7 an insured participant in the Wisconsin Retirement System who is a teacher, one
8 shall be an insured participant in the Wisconsin Retirement System who is a retired
9 employee, one shall be an insured employee of a local unit of government, and one
10 shall be the chief executive or a member of the governing body of a local unit of
11 government that is a participating employer in the Wisconsin Retirement System.
12 The designee of the attorney general shall be an attorney.

13 **SECTION 12.** 15.96 of the statutes is repealed.

14 **SECTION 13.** 16.002 (2) of the statutes, as affected by 2011 Wisconsin Act
15 (January 2011 Special Session Senate Bill 6), is amended to read:

16 16.002 (2) "Departments" means constitutional offices, departments, and
17 independent agencies and includes all societies, associations, and other agencies of
18 state government for which appropriations are made by law, but not including
19 authorities created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 52, 231, 232,
20 233, 234, 235, 237, 238, or 279.

21 **SECTION 14.** 16.004 (4) of the statutes, as affected by 2011 Wisconsin Act
22 (January 2011 Special Session Senate Bill 6), is amended to read:

23 16.004 (4) FREEDOM OF ACCESS. The secretary and such employees of the
24 department as the secretary designates may enter into the offices of state agencies
25 and authorities created under subch. II of ch. 114 ~~or~~ and subch. III of ch. 149 and

1 under chs. ~~52~~, 231, 233, 234, 237, 238, and 279, and may examine their books and
2 accounts and any other matter that in the secretary's judgment should be examined
3 and may interrogate the agency's employees publicly or privately relative thereto.

4 **SECTION 15.** 16.004 (5) of the statutes, as affected by 2011 Wisconsin Act
5 (January 2011 Special Session Senate Bill 6), is amended to read:

6 16.004 (5) AGENCIES AND EMPLOYEES TO COOPERATE. All state agencies and
7 authorities created under subch. II of ch. 114 ~~or~~ and subch. III of ch. 149 and under
8 chs. ~~52~~, 231, 233, 234, 237, 238, and 279, and their officers and employees, shall
9 cooperate with the secretary and shall comply with every request of the secretary
10 relating to his or her functions.

11 **SECTION 16.** 16.004 (12) (a) of the statutes, as affected by 2011 Wisconsin Act
12 (January 2011 Special Session Senate Bill 6), is amended to read:

13 16.004 (12) (a) In this subsection, "state agency" means an association,
14 authority, board, department, commission, independent agency, institution, office,
15 society, or other body in state government created or authorized to be created by the
16 constitution or any law, including the legislature, the office of the governor, and the
17 courts, but excluding the University of Wisconsin Hospitals and Clinics Authority,
18 the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan
19 Authority, the Lower Fox River Remediation Authority, ~~the Wisconsin Quality Home~~
20 ~~Care Authority~~, the Wisconsin Economic Development Corporation, and the Fox
21 River Navigational System Authority.

22 **SECTION 17.** 16.045 (1) (a) of the statutes, as affected by 2011 Wisconsin Act
23 (January 2011 Special Session Senate Bill 6), is amended to read:

24 16.045 (1) (a) "Agency" means an office, department, independent agency,
25 institution of higher education, association, society, or other body in state

1 government created or authorized to be created by the constitution or any law, that
2 is entitled to expend moneys appropriated by law, including the legislature and the
3 courts, but not including an authority created in subch. II of ch. 114 or subch. III of
4 ch. 149 or in ch. ~~52~~, 231, 232, 233, 234, 235, 237, 238, or 279.

5 **SECTION 18.** 16.15 (1) (ab) of the statutes, as affected by 2011 Wisconsin Act
6 (January 2011 Special Session Senate Bill 6), is amended to read:

7 16.15 (1) (ab) "Authority" has the meaning given under s. 16.70 (2), but
8 excludes the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox
9 River Remediation Authority, ~~the Wisconsin Quality Home Care Authority~~, the
10 Wisconsin Economic Development Corporation, and the Health Insurance
11 Risk-Sharing Plan Authority.

12 **SECTION 19.** 16.41 (4) of the statutes, as affected by 2011 Wisconsin Act
13 (January 2011 Special Session Senate Bill 6), is amended to read:

14 16.41 (4) In this section, "authority" means a body created under subch. II of
15 ch. 114 or subch. III of ch. 149 or under ch. ~~52~~, 231, 233, 234, 237, 238, or 279.

16 **SECTION 20.** 16.417 (1) (b) of the statutes, as affected by 2011 Wisconsin Act
17 (January 2011 Special Session Senate Bill 6), is amended to read:

18 16.417 (1) (b) "Authority" means a body created under subch. II of ch. 114 or
19 ch. ~~52~~, 231, 232, 233, 234, 235, 237, 238, or 279.

20 **SECTION 21.** 16.50 (3) (b) of the statutes is amended to read:

21 16.50 (3) (b) No change in the number of full-time equivalent positions
22 authorized through the biennial budget process or other legislative act may be made
23 without the approval of the joint committee on finance, except for position changes
24 made by the governor under s. 16.505 (1) (c) or (2), ~~by the University of Wisconsin~~

1 ~~Hospitals and Clinics Board under s. 16.505 (2n)~~, or by the board of regents of the
2 University of Wisconsin System under s. 16.505 (2m) or (2p).

3 **SECTION 22.** 16.50 (3) (e) of the statutes is amended to read:

4 16.50 (3) (e) No pay increase may be approved unless it is at the rate or within
5 the pay ranges prescribed in the compensation plan or as provided in a collective
6 bargaining agreement under subch. V ~~or VI~~ of ch. 111.

7 **SECTION 23.** 16.505 (1) (intro.) of the statutes is amended to read:

8 16.505 (1) (intro.) Except as provided in subs. (2), (2m), ~~(2n)~~, and (2p), no
9 position, as defined in s. 230.03 (11), regardless of funding source or type, may be
10 created or abolished unless authorized by one of the following:

11 **SECTION 24.** 16.505 (2n) of the statutes is repealed.

12 **SECTION 25.** 16.52 (7) of the statutes, as affected by 2011 Wisconsin Act
13 (January 2011 Special Session Senate Bill 6), is amended to read:

14 16.52 (7) PETTY CASH ACCOUNT. With the approval of the secretary, each agency
15 that is authorized to maintain a contingent fund under s. 20.920 may establish a
16 petty cash account from its contingent fund. The procedure for operation and
17 maintenance of petty cash accounts and the character of expenditures therefrom
18 shall be prescribed by the secretary. In this subsection, "agency" means an office,
19 department, independent agency, institution of higher education, association,
20 society, or other body in state government created or authorized to be created by the
21 constitution or any law, that is entitled to expend moneys appropriated by law,
22 including the legislature and the courts, but not including an authority created in
23 subch. II of ch. 114 or subch. III of ch. 149 or in ch. ~~52~~, 231, 233, 234, 237, 238, or 279.

24 **SECTION 26.** 16.528 (1) (a) of the statutes, as affected by 2011 Wisconsin Act
25 (January 2011 Special Session Senate Bill 6), is amended to read:

1 16.528 (1) (a) "Agency" means an office, department, independent agency,
2 institution of higher education, association, society, or other body in state
3 government created or authorized to be created by the constitution or any law, that
4 is entitled to expend moneys appropriated by law, including the legislature and the
5 courts, but not including an authority created in subch. II of ch. 114 or subch. III of
6 ch. 149 or in ch. ~~52~~, 231, 233, 234, 237, 238, or 279.

7 **SECTION 27.** 16.53 (2) of the statutes, as affected by 2011 Wisconsin Act
8 (January 2011 Special Session Senate Bill 6), is amended to read:

9 16.53 (2) IMPROPER INVOICES. If an agency receives an improperly completed
10 invoice, the agency shall notify the sender of the invoice within 10 working days after
11 it receives the invoice of the reason it is improperly completed. In this subsection,
12 "agency" means an office, department, independent agency, institution of higher
13 education, association, society, or other body in state government created or
14 authorized to be created by the constitution or any law, that is entitled to expend
15 moneys appropriated by law, including the legislature and the courts, but not
16 including an authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch.
17 ~~52~~, 231, 233, 234, 237, 238, or 279.

18 **SECTION 28.** 16.54 (9) (a) 1. of the statutes, as affected by 2011 Wisconsin Act
19 (January 2011 Special Session Senate Bill 6), is amended to read:

20 16.54 (9) (a) 1. "Agency" means an office, department, independent agency,
21 institution of higher education, association, society or other body in state
22 government created or authorized to be created by the constitution or any law, which
23 is entitled to expend moneys appropriated by law, including the legislature and the
24 courts, but not including an authority created in subch. II of ch. 114 or subch. III of
25 ch. 149 or in ch. ~~52~~, 231, 233, 234, 237, 238, or 279.

1 **SECTION 29.** 16.70 (2) of the statutes is amended to read:

2 16.70 (2) "Authority" means a body created under subch. II of ch. 114 or subch.
3 III of ch. 149 or under ch. ~~52~~, 231, 232, 233, 234, 235, 237, or 279.

4 **SECTION 30.** 16.705 (3) of the statutes is repealed.

5 **SECTION 31.** 16.765 (1) of the statutes, as affected by 2011 Wisconsin Act ...
6 (January 2011 Special Session Senate Bill 6), is amended to read:

7 16.765 (1) Contracting agencies, the University of Wisconsin Hospitals and
8 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
9 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower
10 Fox River Remediation Authority, ~~the Wisconsin Quality Home Care Authority~~, the
11 Wisconsin Economic Development Corporation, and the Bradley Center Sports and
12 Entertainment Corporation shall include in all contracts executed by them a
13 provision obligating the contractor not to discriminate against any employee or
14 applicant for employment because of age, race, religion, color, handicap, sex, physical
15 condition, developmental disability as defined in s. 51.01 (5), sexual orientation as
16 defined in s. 111.32 (13m), or national origin and, except with respect to sexual
17 orientation, obligating the contractor to take affirmative action to ensure equal
18 employment opportunities.

19 **SECTION 32.** 16.765 (2) of the statutes, as affected by 2011 Wisconsin Act ...
20 (January 2011 Special Session Senate Bill 6), is amended to read:

21 16.765 (2) Contracting agencies, the University of Wisconsin Hospitals and
22 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
23 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower
24 Fox River Remediation Authority, ~~the Wisconsin Quality Home Care Authority~~, the
25 Wisconsin Economic Development Corporation, and the Bradley Center Sports and

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1 Entertainment Corporation shall include the following provision in every contract
2 executed by them: "In connection with the performance of work under this contract,
3 the contractor agrees not to discriminate against any employee or applicant for
4 employment because of age, race, religion, color, handicap, sex, physical condition,
5 developmental disability as defined in s. 51.01 (5), sexual orientation or national
6 origin. This provision shall include, but not be limited to, the following: employment,
7 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or
8 termination; rates of pay or other forms of compensation; and selection for training,
9 including apprenticeship. Except with respect to sexual orientation, the contractor
10 further agrees to take affirmative action to ensure equal employment opportunities.
11 The contractor agrees to post in conspicuous places, available for employees and
12 applicants for employment, notices to be provided by the contracting officer setting
13 forth the provisions of the nondiscrimination clause".

14 **SECTION 33.** 16.765 (4) of the statutes is amended to read:

15 16.765 (4) Contracting agencies, the University of Wisconsin Hospitals and
16 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
17 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower
18 Fox River Remediation Authority, ~~the Wisconsin Quality Home Care Authority,~~ and
19 the Bradley Center Sports and Entertainment Corporation shall take appropriate
20 action to revise the standard government contract forms under this section.

21 **SECTION 34.** 16.765 (5) of the statutes, as affected by 2011 Wisconsin Act ...
22 (January 2011 Special Session Senate Bill 6), is amended to read:

23 16.765 (5) The head of each contracting agency and the boards of directors of
24 the University of Wisconsin Hospitals and Clinics Authority, the Fox River
25 Navigational System Authority, the Wisconsin Aerospace Authority, the Health

1 Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation
2 Authority, ~~the Wisconsin Quality Home Care Authority~~, the Wisconsin Economic
3 Development Corporation, and the Bradley Center Sports and Entertainment
4 Corporation shall be primarily responsible for obtaining compliance by any
5 contractor with the nondiscrimination and affirmative action provisions prescribed
6 by this section, according to procedures recommended by the department. The
7 department shall make recommendations to the contracting agencies and the boards
8 of directors of the University of Wisconsin Hospitals and Clinics Authority, the Fox
9 River Navigational System Authority, the Wisconsin Aerospace Authority, the
10 Health Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation
11 Authority, ~~the Wisconsin Quality Home Care Authority~~, the Wisconsin Economic
12 Development Corporation, and the Bradley Center Sports and Entertainment
13 Corporation for improving and making more effective the nondiscrimination and
14 affirmative action provisions of contracts. The department shall promulgate such
15 rules as may be necessary for the performance of its functions under this section.

16 **SECTION 35.** 16.765 (6) of the statutes, as affected by 2011 Wisconsin Act
17 (January 2011 Special Session Senate Bill 6), is amended to read:

18 16.765 (6) The department may receive complaints of alleged violations of the
19 nondiscrimination provisions of such contracts. The department shall investigate
20 and determine whether a violation of this section has occurred. The department may
21 delegate this authority to the contracting agency, the University of Wisconsin
22 Hospitals and Clinics Authority, the Fox River Navigational System Authority, the
23 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority,
24 the Lower Fox River Remediation Authority, ~~the Wisconsin Quality Home Care~~
25 ~~Authority~~, the Wisconsin Economic Development Corporation, or the Bradley Center

1 Sports and Entertainment Corporation for processing in accordance with the
2 department's procedures.

3 **SECTION 36.** 16.765 (7) (intro.) of the statutes, as affected by 2011 Wisconsin
4 Act (January 2011 Special Session Senate Bill 6), is amended to read:

5 16.765 (7) (intro.) When a violation of this section has been determined by the
6 department, the contracting agency, the University of Wisconsin Hospitals and
7 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
8 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower
9 Fox River Remediation Authority, ~~the Wisconsin Quality Home Care Authority~~, the
10 Wisconsin Economic Development Corporation, or the Bradley Center Sports and
11 Entertainment Corporation, the contracting agency, the University of Wisconsin
12 Hospitals and Clinics Authority, the Fox River Navigational System Authority, the
13 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority,
14 the Lower Fox River Remediation Authority, ~~the Wisconsin Quality Home Care~~
15 ~~Authority~~, the Wisconsin Economic Development Corporation, or the Bradley Center
16 Sports and Entertainment Corporation shall:

17 **SECTION 37.** 16.765 (7) (d) of the statutes, as affected by 2011 Wisconsin Act
18 (January 2011 Special Session Senate Bill 6), is amended to read:

19 16.765 (7) (d) Direct the violating party to take immediate steps to prevent
20 further violations of this section and to report its corrective action to the contracting
21 agency, the University of Wisconsin Hospitals and Clinics Authority, the Fox River
22 Navigational System Authority, the Wisconsin Aerospace Authority, the Health
23 Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation
24 Authority, ~~the Wisconsin Quality Home Care Authority~~, the Wisconsin Economic

1 Development Corporation, or the Bradley Center Sports and Entertainment
2 Corporation.

3 **SECTION 38.** 16.765 (8) of the statutes, as affected by 2011 Wisconsin Act ...
4 (January 2011 Special Session Senate Bill 6), is amended to read:

5 16.765 (8) If further violations of this section are committed during the term
6 of the contract, the contracting agency, the Fox River Navigational System Authority,
7 the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan
8 Authority, the Lower Fox River Remediation Authority, ~~the Wisconsin Quality Home~~
9 ~~Care Authority~~, the Wisconsin Economic Development Corporation, or the Bradley
10 Center Sports and Entertainment Corporation may permit the violating party to
11 complete the contract, after complying with this section, but thereafter the
12 contracting agency, the Fox River Navigational System Authority, the Wisconsin
13 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower
14 Fox River Remediation Authority, ~~the Wisconsin Quality Home Care Authority~~, the
15 Wisconsin Economic Development Corporation, or the Bradley Center Sports and
16 Entertainment Corporation shall request the department to place the name of the
17 party on the ineligible list for state contracts, or the contracting agency, the Fox River
18 Navigational System Authority, the Wisconsin Aerospace Authority, the Health
19 Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation
20 Authority, ~~the Wisconsin Quality Home Care Authority~~, the Wisconsin Economic
21 Development Corporation, or the Bradley Center Sports and Entertainment
22 Corporation may terminate the contract without liability for the uncompleted
23 portion or any materials or services purchased or paid for by the contracting party
24 for use in completing the contract.

25 **SECTION 39.** 16.84 (1) of the statutes is amended to read:

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1 16.84 (1) Have charge of, operate, maintain and keep in repair the state capitol
2 building, the executive residence, ~~the light, heat and power plant,~~ the state office
3 buildings ~~and their power plants,~~ any heating, cooling, and power plants owned and
4 operated by the state serving those properties, the grounds connected ~~therewith~~ with
5 those properties, and such other state properties as are designated by law. All costs
6 of such operation and maintenance shall be paid from the appropriations under s.
7 20.505 (5) (ka) and (kb), except for debt service costs paid under s. 20.866 (1) (u). The
8 department shall transfer moneys from the appropriation under s. 20.505 (5) (ka) to
9 the appropriation account under s. 20.505 (5) (kc) sufficient to make principal and
10 interest payments on state facilities and payments to the United States under s.
11 13.488 (1) (m).

12 **SECTION 40.** 16.848 (5) of the statutes is created to read:

13 16.848 (5) This section does not apply to the sale of any state-owned heating,
14 cooling, and power plant. Any sale of such a plant is governed exclusively by s.
15 16.896.

16 **SECTION 41.** 16.85 (2) of the statutes, as affected by 2011 Wisconsin Act ...
17 (January 2011 Special Session Senate Bill 6), is amended to read:

18 16.85 (2) To furnish engineering, architectural, project management, and other
19 building construction services whenever requisitions therefor are presented to the
20 department by any agency. The department may deposit moneys received from the
21 provision of these services in the account under s. 20.505 (1) (kc) or in the general
22 fund as general purpose revenue — earned. In this subsection, “agency” means an
23 office, department, independent agency, institution of higher education, association,
24 society, or other body in state government created or authorized to be created by the
25 constitution or any law, which is entitled to expend moneys appropriated by law,

1 including the legislature and the courts, but not including an authority created in
2 subch. II of ch. 114 or subch. III of ch. 149 or in ch. ~~52~~, 231, 233, 234, 237, 238, or 279.

3 **SECTION 42.** 16.865 (8) of the statutes, as affected by 2011 Wisconsin Act
4 (January 2011 Special Session Senate Bill 6), is amended to read:

5 16.865 (8) Annually in each fiscal year, allocate as a charge to each agency a
6 proportionate share of the estimated costs attributable to programs administered by
7 the agency to be paid from the appropriation under s. 20.505 (2) (k). The department
8 may charge premiums to agencies to finance costs under this subsection and pay the
9 costs from the appropriation on an actual basis. The department shall deposit all
10 collections under this subsection in the appropriation account under s. 20.505 (2) (k).
11 Costs assessed under this subsection may include judgments, investigative and
12 adjustment fees, data processing and staff support costs, program administration
13 costs, litigation costs, and the cost of insurance contracts under sub. (5). In this
14 subsection, "agency" means an office, department, independent agency, institution
15 of higher education, association, society, or other body in state government created
16 or authorized to be created by the constitution or any law, that is entitled to expend
17 moneys appropriated by law, including the legislature and the courts, but not
18 including an authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch.
19 ~~52~~, 231, 232, 233, 234, 235, 237, 238, or 279.

20 **SECTION 43.** 16.895 (2) (h) of the statutes is amended to read:

21 16.895 (2) (h) Periodically assess to agencies their proportionate cost of the
22 expenses incurred by the department under this subsection and ss. 16.85 (4), 16.896
23 (1), 16.90, 16.91 and 16.92 in accordance with a method of apportionment determined
24 by the department.

25 **SECTION 44.** 16.896 of the statutes is created to read:

1 **16.896 Sale or contractual operation of state-owned heating, cooling,**
2 **and power plants. (1)** Notwithstanding ss. 13.48 (14) (am) and 16.705 (1), the
3 department may sell any state-owned heating, cooling, and power plant or may
4 contract with a private entity for the operation of any such plant, with or without
5 solicitation of bids, for any amount that the department determines to be in the best
6 interest of the state. Notwithstanding ss. 196.49 and 196.80, no approval or
7 certification of the public service commission is necessary for a public utility to
8 purchase, or contract for the operation of, such a plant, and any such purchase is
9 considered to be in the public interest and to comply with the criteria for certification
10 of a project under s. 196.49 (3) (b).

11 (2) If there is any outstanding public debt used to finance the acquisition,
12 construction, or improvement of any plant that is sold under sub. (1), the department
13 shall deposit a sufficient amount of the net proceeds from the sale of the property in
14 the bond security and redemption fund under s. 18.09 to repay the principal and pay
15 the interest on the debt, and any premium due upon refunding of the debt. If the
16 property was acquired, constructed, or improved with federal financial assistance,
17 the department shall repay to the federal government any of the net proceeds
18 required by federal law.

19 (3) Except as provided in s. 51.06 (6), if there is no such debt outstanding or
20 there are no moneys payable to the federal government, or if the net proceeds exceed
21 the amount required to be deposited or paid under sub. (2), the department shall
22 deposit the net proceeds or remaining net proceeds in the budget stabilization fund.

23 (4) If the department sells or contracts for the operation of any state-owned
24 heating, cooling, and power plant under sub. (1), the department may attach such
25 conditions to the sale or contract as it finds to be in the best interest of the state. Any

1 such contract shall provide that, unless otherwise expressly agreed between the
2 parties, the purchaser or contractor will continue to operate the plant and keep it in
3 good repair, and will continue to provide adequate and sufficient heating, cooling,
4 and power to meet the state's current and future needs. Any such contract shall also
5 require the purchaser or contractor to submit to the jurisdiction of the public service
6 commission under ch. 196 if the commission determines to regulate the purchaser
7 or contractor as a public utility under s. 196.025 (7).

8 (5) (a) In this subsection, "state agency" has the meaning given under s. 20.001
9 (1).

10 (b) Notwithstanding s. 16.50 (1), the secretary shall require submission of
11 expenditure estimates under s. 16.50 (2) for each state agency that proposes to
12 expend moneys from any appropriation for the operation of a state-owned heating,
13 cooling, and power plant during any fiscal biennium in which the plant is sold or in
14 which the department contracts for operation of the plant. Notwithstanding s. 16.50
15 (2), the secretary shall disapprove any such estimate for any period during which
16 that plant is owned or operated by a private entity. The secretary may then require
17 the use of the amounts of any disapproved expenditure estimates for the purpose of
18 purchase of contractual services relating to heating, cooling, or power for state
19 facilities or payment of the costs of purchasing heating, cooling, or power for the state
20 agencies or facilities for which the amounts were appropriated.

21 (c) If the department sells or contracts for the operation of any state-owned
22 heating, cooling, and power plant under sub. (1), the secretary may identify any
23 full-time equivalent positions authorized for the state agency that has operating
24 authority for the plant, the duties of which primarily relate to the management or
25 operation of the plant, and may decrease the authorized full-time equivalent

1 positions for that state agency by the number of positions so identified effective on
2 the date that the state agency no longer has operating authority for the plant.

3 (d) Notwithstanding ss. 20.001 (3) (a) to (c) and 25.40 (3), the secretary may
4 lapse or transfer to the general fund from the unencumbered balances of
5 appropriations to any state agency, other than sum sufficient appropriations and
6 appropriations of federal revenues, any amount appropriated to a state agency that
7 is determined by the secretary to be allocated for the purpose of management or
8 operation of a plant that is sold or the operation of which is contracted under sub. (1)
9 effective on the date that the state agency to which the moneys are appropriated no
10 longer has operating authority for the plant.

11 (e) The secretary shall notify the cochairpersons of the joint committee on
12 finance of any action taken by the secretary under this subsection.

13 **SECTION 45.** 19.42 (10) (s) of the statutes is repealed.

14 **SECTION 46.** 19.42 (13) (o) of the statutes is repealed.

15 **SECTION 47.** 19.82 (1) of the statutes is amended to read:

16 19.82 (1) "Governmental body" means a state or local agency, board,
17 commission, committee, council, department or public body corporate and politic
18 created by constitution, statute, ordinance, rule or order; a governmental or
19 quasi-governmental corporation except for the Bradley center sports and
20 entertainment corporation; a local exposition district under subch. II of ch. 229; a
21 long-term care district under s. 46.2895; or a formally constituted subunit of any of
22 the foregoing, but excludes any such body or committee or subunit of such body which
23 is formed for or meeting for the purpose of collective bargaining under subch. I, IV,
24 or V, or VI of ch. 111.

25 **SECTION 48.** 19.85 (3) of the statutes is amended to read:

1 19.85 (3) Nothing in this subchapter shall be construed to authorize a
2 governmental body to consider at a meeting in closed session the final ratification or
3 approval of a collective bargaining agreement under subch. I, IV, or V, ~~or VI~~ of ch. 111
4 which has been negotiated by such body or on its behalf.

5 **SECTION 49.** 19.86 of the statutes is amended to read:

6 **19.86 Notice of collective bargaining negotiations.** Notwithstanding s.
7 19.82 (1), where notice has been given by either party to a collective bargaining
8 agreement under subch. I, IV, or V, ~~or VI~~ of ch. 111 to reopen such agreement at its
9 expiration date, the employer shall give notice of such contract reopening as provided
10 in s. 19.84 (1) (b). If the employer is not a governmental body, notice shall be given
11 by the employer's chief officer or such person's designee.

12 **SECTION 50.** 20.425 (1) (a) of the statutes is amended to read:

13 20.425 (1) (a) *General program operations.* The amounts in the schedule for
14 the purposes provided in subchs. I, IV, and V, ~~and VI~~ of ch. 111 and s. 230.45 (1).

15 **SECTION 51.** 20.425 (1) (i) of the statutes is amended to read:

16 20.425 (1) (i) *Fees, collective bargaining training, publications, and appeals.*
17 The amounts in the schedule for the performance of fact-finding, mediation,
18 certification, and arbitration functions, for the provision of copies of transcripts, for
19 the cost of operating training programs under ss. 111.09 (3), ~~111.71 (5)~~, and 111.94
20 (3), for the preparation of publications, transcripts, reports, and other copied
21 material, and for costs related to conducting appeals under s. 230.45. All moneys
22 received under ss. 111.09 (1) and (2), 111.70 (4) (d) 3. b., 111.71 (1) and (2), 111.83 (3)
23 (b), 111.94 (1) and (2), ~~111.9993~~, and 230.45 (3), all moneys received from arbitrators
24 and arbitration panel members, and individuals who are interested in serving in
25 such positions, and from individuals and organizations who participate in other

1 collective bargaining training programs conducted by the commission, and all
2 moneys received from the sale of publications, transcripts, reports, and other copied
3 material shall be credited to this appropriation account.

4 **SECTION 52.** 20.495 of the statutes is repealed.

5 **SECTION 53.** 20.515 (1) (d) of the statutes is created to read:

6 20.515 (1) (d) *Health insurance and retirement studies.* A sum sufficient to fund
7 the cost of studies, including any actuarial studies and costs incurred by the
8 department of employee trust funds, conducted under 2011 Wisconsin Act ... (this
9 act), section 9115 (1) and (3). No moneys may be expended from this appropriation
10 without the approval of the secretary of administration.

11 **SECTION 54.** 20.515 (1) (ut) of the statutes is amended to read:

12 20.515 (1) (ut) *Health insurance data collection and analysis and other*
13 *consulting services contracts.* From the public employee trust fund, the amounts in
14 the schedule for the costs of contracting for insurance data collection and analysis
15 services under ss. 40.03 (6) (j) and 153.05 (2r) and other consulting services contracts
16 under s. 40.03 (6) (j).

17 **SECTION 55.** 20.545 (1) (k) of the statutes is amended to read:

18 20.545 (1) (k) *General program operations.* The amounts in the schedule to
19 administer state employment relations functions and the civil service system under
20 ~~subchs. subch. V and VI~~ of ch. 111 and ch. 230, to pay awards under s. 230.48, and
21 to defray the expenses of the state employees suggestion board. All moneys received
22 from state agencies for materials and services provided by the office of state
23 employment relations shall be credited to this appropriation.

24 **SECTION 56.** 20.545 (1) (km) of the statutes is amended to read:

1 20.545 (1) (km) *Collective bargaining grievance arbitrations*. The amounts in
2 the schedule for the payment of the state's share of costs related to collective
3 bargaining grievance arbitrations under s. 111.86 ~~and related to collective~~
4 ~~bargaining grievance arbitrations under s. 111.993~~. All moneys received from state
5 agencies for the purpose of reimbursing the state's share of the costs related to
6 grievance arbitrations under s. 111.86 and to reimburse the state's share of costs for
7 training related to grievance arbitrations, ~~and all moneys received from institutions,~~
8 ~~as defined in s. 36.05 (9), for the purpose of reimbursing the state's share of the costs~~
9 ~~related to grievance arbitrations under s. 111.993 and to reimburse the state's share~~
10 ~~of costs for training related to grievance arbitrations~~ shall be credited to this
11 appropriation account.

12 **SECTION 57.** 20.865 (1) (ci) of the statutes is amended to read:

13 20.865 (1) (ci) *Nonrepresented university system senior executive, faculty and*
14 *academic pay adjustments*. A sum sufficient to pay the cost of pay and related
15 adjustments approved by the joint committee on employment relations under s.
16 230.12 (3) (e) for University of Wisconsin System employees under ss. 20.923 (4g), (5)
17 and (6) (m) and 230.08 (2) (d) who are not included within a collective bargaining unit
18 for which a representative is certified under subch. V ~~or VI~~ of ch. 111, as determined
19 under s. 20.928, other than adjustments funded under par. (cj).

20 **SECTION 58.** 20.865 (1) (cm) of the statutes is repealed.

21 **SECTION 59.** 20.865 (1) (ic) of the statutes is amended to read:

22 20.865 (1) (ic) *Nonrepresented university system senior executive, faculty and*
23 *academic pay adjustments*. From the appropriate program revenue and program
24 revenue-service accounts, a sum sufficient to supplement the appropriations to the
25 University of Wisconsin System to pay the cost of pay and related adjustments

1 approved by the joint committee on employment relations under s. 230.12 (3) (e) for
2 University of Wisconsin System employees under ss. 20.923 (4g), (5) and (6) (m) and
3 230.08 (2) (d) who are not included within a collective bargaining unit for which a
4 representative is certified under subch. V ~~or~~ VI of ch. 111, as determined under s.
5 20.928, other than adjustments funded under par. (cj).

6 **SECTION 60.** 20.865 (1) (im) of the statutes is repealed.

7 **SECTION 61.** 20.865 (1) (si) of the statutes is amended to read:

8 20.865 (1) (si) *Nonrepresented university system senior executive, faculty and*
9 *academic pay adjustments.* From the appropriate segregated funds, a sum sufficient
10 to supplement the appropriations to the University of Wisconsin System to pay the
11 cost of pay and related adjustments approved by the joint committee on employment
12 relations under s. 230.12 (3) (e) for University of Wisconsin System employees under
13 ss. 20.923 (4g), (5) and (6) (m) and 230.08 (2) (d) who are not included within a
14 collective bargaining unit for which a representative is certified under subch. V ~~or~~
15 ~~VI~~ of ch. 111, as determined under s. 20.928.

16 **SECTION 62.** 20.865 (1) (sm) of the statutes is repealed.

17 **SECTION 63.** 20.866 (2) (xf) of the statutes is amended to read:

18 20.866 (2) (xf) *Building commission; refunding tax-supported and*
19 *self-amortizing general obligation debt incurred before July 1, 2011.* From the
20 capital improvement fund, a sum sufficient to refund the whole or any part of any
21 unpaid indebtedness used to finance tax-supported or self-amortizing facilities.
22 The state may contract public debt in an amount not to exceed \$300,000,000
23 \$474,000,000 for this purpose. Such indebtedness shall be construed to include any
24 premium and interest payable with respect thereto. Debt incurred by this paragraph
25 shall be incurred before July 1, 2011, and shall be repaid under the appropriations

1 providing for the retirement of public debt incurred for tax-supported and
2 self-amortizing facilities in proportional amounts to the purposes for which the debt
3 was refinanced.

4 **SECTION 64.** 20.917 (3) (b) of the statutes is amended to read:

5 20.917 (3) (b) This subsection applies to employees in all positions in the civil
6 service, including those employees in positions included in collective bargaining
7 units under subch. V ~~or VI~~ of ch. 111, whether or not the employees are covered by
8 a collective bargaining agreement.

9 **SECTION 65.** 20.921 (1) (a) 2. of the statutes is amended to read:

10 20.921 (1) (a) 2. Payment If the state employee is a public safety employee
11 under s. 111.81 (15r), payment of dues to employee organizations.

12 **SECTION 66.** 20.921 (1) (b) of the statutes is amended to read:

13 20.921 (1) (b) Except as provided in ~~ss. 111.06 (1) (c) and s.~~ 111.84 (1) (f), the
14 request under par. (a) shall be made to the state agency or to the University of
15 Wisconsin Hospitals and Clinics Authority in the form and manner and contain the
16 directions and information prescribed by each state agency or by the authority. The
17 request may be withdrawn or the amount paid to the payee may be changed by
18 notifying the state agency or the authority to that effect, but no such withdrawal or
19 change shall affect a payroll certification already prepared.

20 **SECTION 67.** 20.923 (6) (intro.) of the statutes is amended to read:

21 20.923 (6) SALARIES SET BY APPOINTING AUTHORITIES. (intro.) Salaries for the
22 following positions may be set by the appointing authority, subject to restrictions
23 otherwise set forth in the statutes and the compensation plan under s. 230.12, except
24 where the salaries are a subject of bargaining with a certified representative of a
25 collective bargaining unit under s. 111.91 ~~or 111.998~~:

1 **SECTION 68.** 20.923 (8) of the statutes is amended to read:

2 20.923 (8) DEPUTIES. Salaries for deputies appointed pursuant to ss. 13.94 (3)
3 (b), 15.04 (2), 230.04 (16), and 551.601 (1) shall be set by the appointing authority.
4 The salary shall not exceed the maximum of the salary range one range below the
5 salary range of the executive salary group to which the department or agency head
6 is assigned. The positions of assistant secretary of state, assistant state treasurer
7 and associate director of the historical society shall be treated as unclassified
8 deputies for pay purposes under this subsection.

9 **SECTION 69.** 20.928 (1) of the statutes is amended to read:

10 20.928 (1) Each state agency head shall certify to the department of
11 administration, at such time and in such manner as the secretary of administration
12 prescribes, the sum of money needed by the state agency from the appropriations
13 under s. 20.865 (1) (c), (ci), ~~(em)~~, (cj), (d), (i), (ic), ~~(im)~~, (j), (s), (si), ~~(sm)~~, and (t). Upon
14 receipt of the certifications together with such additional information as the
15 secretary of administration prescribes, the secretary shall determine the amounts
16 required from the respective appropriations to supplement state agency budgets.

17 **SECTION 70.** 36.09 (1) (j) of the statutes is amended to read:

18 36.09 (1) (j) Except where such matters are a subject of bargaining with a
19 certified representative of a collective bargaining unit under s. 111.91 ~~or 111.998~~, the
20 board shall establish salaries for persons not in the classified staff prior to July 1 of
21 each year for the next fiscal year, and shall designate the effective dates for payment
22 of the new salaries. In the first year of the biennium, payments of the salaries
23 established for the preceding year shall be continued until the biennial budget bill
24 is enacted. If the budget is enacted after July 1, payments shall be made following
25 enactment of the budget to satisfy the obligations incurred on the effective dates, as

1 designated by the board, for the new salaries, subject only to the appropriation of
2 funds by the legislature and s. 20.928 (3). This paragraph does not limit the
3 authority of the board to establish salaries for new appointments. The board may
4 not increase the salaries of employees specified in ss. 20.923 (5) and (6) (m) and
5 230.08 (2) (d) under this paragraph unless the salary increase conforms to the
6 proposal as approved under s. 230.12 (3) (e) or the board authorizes the salary
7 increase to correct salary inequities under par. (h), to fund job reclassifications or
8 promotions, or to recognize competitive factors. The board may not increase the
9 salary of any position identified in s. 20.923 (4g) under this paragraph unless the
10 salary increase conforms to the proposal as approved under s. 230.12 (3) (e) or the
11 board authorizes the salary increase to correct a salary inequity or to recognize
12 competitive factors. The board may not increase the salary of any position identified
13 in s. 20.923 (4g) (ae) and (am) to correct a salary inequity that results from the
14 appointment of a person to a position identified in s. 20.923 (4g) (ae) and (am) unless
15 the increase is approved by the office of state employment relations. The granting
16 of salary increases to recognize competitive factors does not obligate inclusion of the
17 annualized amount of the increases in the appropriations under s. 20.285 (1) for
18 subsequent fiscal bienniums. No later than October 1 of each year, the board shall
19 report to the joint committee on finance and the secretary of administration and
20 director of the office of state employment relations concerning the amounts of any
21 salary increases granted to recognize competitive factors, and the institutions at
22 which they are granted, for the 12-month period ending on the preceding June 30.

23 **SECTION 71.** 36.11 (1) (b) of the statutes is amended to read:

24 36.11 (1) (b) Except as provided in s. 16.896 (1) and this paragraph, the board
25 may purchase, have custody of, hold, control, possess, lease, grant easements and

1 enjoy any lands, buildings, books, records and all other property of any nature which
2 may be necessary and required for the purposes, objects and uses of the system
3 authorized by law. Any lease is subject to the powers of the University of Wisconsin
4 Hospitals and Clinics Authority under s. 233.03 (13) and the rights of the authority
5 under any lease agreement, as defined in s. 233.01 (6). The board shall not permit
6 a facility that would be privately owned or operated to be constructed on state-owned
7 land without obtaining prior approval of the building commission under s. 13.48 (12).
8 The Except as provided in s. 16.896 (1), the board may sell or dispose of such property
9 as provided by law, or any part thereof when in its judgment it is for the best interests
10 of the system and the state. All purchases and sales of real property shall be subject
11 to the approval of the building commission. The provision of all leases of real
12 property to be occupied by the board shall be the responsibility of the department of
13 administration under s. 16.84 (5).

14 **SECTION 72.** 36.25 (13g) (c) of the statutes is repealed.

15 **SECTION 73.** 40.02 (25) (b) 2. of the statutes is amended to read:

16 40.02 (25) (b) 2. Any person employed as a teaching assistant or graduate
17 assistant and other employees-in-training as are designated by the board of regents
18 of the university, who are employed on at least a one-third full-time basis.

19 **SECTION 74.** 40.02 (25) (b) 8. of the statutes is amended to read:

20 40.02 (25) (b) 8. Any other state employee for whom coverage is authorized
21 under a collective bargaining agreement pursuant to subch. I, V, ~~or VI~~ of ch. 111 or
22 under s. 230.12 or 233.10, other than an employee appointed to a limited term
23 appointment under s. 230.26.

24 **SECTION 75.** 40.02 (27) of the statutes is amended to read:

1 40.02 (27) "Employee required contribution" means the contribution made by
2 an employee under s. 40.05 (1) (a) 1. to 4. ~~or for an employee under s. 40.05 (1) (b).~~

3 **SECTION 76.** 40.03 (6) (c) of the statutes is amended to read:

4 40.03 (6) (c) Shall not enter into any agreements to modify or expand group
5 insurance coverage in a manner which conflicts with this chapter or rules of the
6 department or materially affects the level of premiums required to be paid by the
7 state or its employees, or the level of benefits to be provided, under any group
8 insurance coverage. This restriction shall not be construed to prevent modifications
9 required by law, prohibit the group insurance board from modifying the standard
10 plan to establish a more cost effective benefit plan design or providing optional
11 insurance coverages as alternatives to the standard insurance coverage when any
12 excess of required premium over the premium for the standard coverage is paid by
13 the employee, prohibit the group insurance board from encouraging participation in
14 wellness or disease management programs, or prohibit the group insurance board
15 from providing other plans as authorized under par. (b).

16 **SECTION 77.** 40.03 (6) (j) of the statutes is amended to read:

17 40.03 (6) (j) May contract with the department of health services and may
18 contract with other public or private entities for data collection and analysis services
19 related to health maintenance organizations and insurance companies that provide
20 health insurance to state employees, as well as for any other consulting services
21 related to plans offered by the group insurance board.

22 **SECTION 78.** 40.04 (2) (a) of the statutes is amended to read:

23 40.04 (2) (a) An administrative account shall be maintained within the fund
24 from which administrative costs of the department shall be paid, except charges for
25 services performed by the investment board, costs of medical and vocational

1 evaluations used in determinations of eligibility for benefits under ss. 40.61, 40.63
2 and 40.65 and costs of contracting for insurance data collection and analysis services
3 and other consulting services under s. 40.03 (6) (j).

4 **SECTION 79.** 40.04 (2) (e) of the statutes is amended to read:

5 40.04 (2) (e) The costs of contracting for insurance data collection and analysis
6 services and other consulting services under s. 40.03 (6) (j) shall be paid from the
7 appropriation under s. 20.515 (1) (ut).

8 **SECTION 80.** 40.05 (1) (a) (intro.) of the statutes is amended to read:

9 40.05 (1) (a) (intro.) ~~Except as provided in~~ Subject to par. (b) and sub. (2n):

10 **SECTION 81.** 40.05 (1) (a) 1. of the statutes is amended to read:

11 40.05 (1) (a) 1. For each participating employee not otherwise specified, ~~5% of~~
12 ~~each payment of earnings~~ an amount equal to one-half of all actuarially required
13 contributions, as approved by the board under s. 40.03 (1) (e).

14 **SECTION 82.** 40.05 (1) (a) 2. of the statutes is amended to read:

15 40.05 (1) (a) 2. For each participating employee whose formula rate is
16 determined under s. 40.23 (2m) (e) 2., ~~5.5% of each payment of earnings~~ an amount
17 equal to one-half of all actuarially required contributions, as approved by the board
18 under s. 40.03 (1) (e).

19 **SECTION 83.** 40.05 (1) (a) 3. of the statutes is amended to read:

20 40.05 (1) (a) 3. For each participating employee whose formula rate is
21 determined under s. 40.23 (2m) (e) 3., ~~6% of each payment of earnings~~ the percentage
22 of earnings paid by a participating employee under subd. 1.

23 **SECTION 84.** 40.05 (1) (a) 4. of the statutes is amended to read:

1 40.05 (1) (a) 4. For each participating employee whose formula rate is
2 determined under s. 40.23 (2m) (e) 4., ~~8% of each payment of earnings~~ the percentage
3 of earnings paid by a participating employee under subd. 1.

4 **SECTION 85.** 40.05 (1) (b) of the statutes is repealed and recreated to read:

5 40.05 (1) (b) Except as otherwise provided in a collective bargaining agreement
6 entered into under subch. IV or V of ch. 111, an employer may not pay, on behalf of
7 a participating employee, any of the contributions required by par. (a).

8 **SECTION 86.** 40.05 (2m) of the statutes is repealed.

9 **SECTION 87.** 40.05 (2n) of the statutes is repealed.

10 **SECTION 88.** 40.05 (4) (a) 2. of the statutes is amended to read:

11 40.05 (4) (a) 2. For an insured employee who is an eligible employee under s.
12 40.02 (25) (a) 2. or (b) 1m. or 2c., the employer shall pay required employer
13 contributions toward the health insurance premium of the insured employee
14 beginning on the date on which the employee becomes insured. For an insured state
15 employee who is currently employed, but who is not ~~a limited term appointment~~
16 ~~under s. 230.26~~ or an eligible employee under s. 40.02 (25) (a) 2. or (b) 1m. or 2c., the
17 employer shall pay required employer contributions toward the health insurance
18 premium of the insured employee beginning on the first day of the 3rd month
19 beginning after the date on which the employee begins employment with the state,
20 not including any leave of absence. ~~For an insured employee who has a limited term~~
21 ~~appointment under s. 230.26, the employer shall pay required employer~~
22 ~~contributions toward the health insurance premium of the insured employee~~
23 ~~beginning on the first day of the 7th month beginning after the date on which the~~
24 ~~employee first becomes a participating employee.~~

25 **SECTION 89.** 40.05 (4) (ag) of the statutes is repealed and recreated to read:

1 40.05 (4) (ag) Except as otherwise provided in a collective bargaining
2 agreement under subch. V of ch. 111, the employer shall pay for its currently
3 employed insured employees:

4 1. For insured part-time employees other than employees specified in s. 40.02
5 (25) (b) 2., including those in project positions as defined in s. 230.27 (1), who are
6 appointed to work less than 1,566 hours per year, an amount determined annually
7 by the director of the office of state employment relations.

8 2. For eligible employees not specified in subd. 1. and s. 40.02 (25) (b) 2., an
9 amount not more than 88 percent of the average premium cost of plans offered in the
10 tier with the lowest employee premium cost under s. 40.51 (6). Annually, the director
11 of the office of state employment relations shall establish the amount that the
12 employer is required to pay under this subdivision.

13 **SECTION 90.** 40.05 (4) (ar) of the statutes is repealed.

14 **SECTION 91.** 40.05 (4) (b) of the statutes is amended to read:

15 40.05 (4) (b) Except as provided under pars. (bc) and (bp), accumulated unused
16 sick leave under ss. 13.121 (4), 36.30, 230.35 (2), 233.10, and 757.02 (5) and subch.
17 I, V, ~~or VI~~ of ch. 111 of any eligible employee shall, at the time of death, upon
18 qualifying for an immediate annuity or for a lump sum payment under s. 40.25 (1)
19 or upon termination of creditable service and qualifying as an eligible employee
20 under s. 40.02 (25) (b) 6. or 10., be converted, at the employee's highest basic pay rate
21 he or she received while employed by the state, to credits for payment of health
22 insurance premiums on behalf of the employee or the employee's surviving insured
23 dependents. Any supplemental compensation that is paid to a state employee who
24 is classified under the state classified civil service as a teacher, teacher supervisor,
25 or education director for the employee's completion of educational courses that have

1 been approved by the employee's employer is considered as part of the employee's
2 basic pay for purposes of this paragraph. The full premium for any eligible employee
3 who is insured at the time of retirement, or for the surviving insured dependents of
4 an eligible employee who is deceased, shall be deducted from the credits until the
5 credits are exhausted and paid from the account under s. 40.04 (10), and then
6 deducted from annuity payments, if the annuity is sufficient. The department shall
7 provide for the direct payment of premiums by the insured to the insurer if the
8 premium to be withheld exceeds the annuity payment. Upon conversion of an
9 employee's unused sick leave to credits under this paragraph or par. (bf), the
10 employee or, if the employee is deceased, the employee's surviving insured
11 dependents may initiate deductions from those credits or may elect to delay
12 initiation of deductions from those credits, but only if the employee or surviving
13 insured dependents are covered by a comparable health insurance plan or policy
14 during the period beginning on the date of the conversion and ending on the date on
15 which the employee or surviving insured dependents later elect to initiate
16 deductions from those credits. If an employee or an employee's surviving insured
17 dependents elect to delay initiation of deductions from those credits, an employee or
18 the employee's surviving insured dependents may only later elect to initiate
19 deductions from those credits during the annual enrollment period under par. (be).
20 A health insurance plan or policy is considered comparable if it provides hospital and
21 medical benefits that are substantially equivalent to the standard health insurance
22 plan established under s. 40.52 (1).

23 **SECTION 92.** 40.05 (4) (bw) of the statutes is amended to read:

24 40.05 (4) (bw) On converting accumulated unused sick leave to credits for the
25 payment of health insurance premiums under par. (b), the department shall add

1 additional credits, calculated in the same manner as are credits under par. (b), that
2 are based on a state employee's accumulated sabbatical leave or earned vacation
3 leave from the state employee's last year of service prior to retirement, or both. The
4 department shall apply the credits awarded under this paragraph for the payment
5 of health insurance premiums only after the credits awarded under par. (b) are
6 exhausted. This paragraph applies only to state employees who are eligible for
7 accumulated unused sick leave conversion under par. (b) and who are entitled to the
8 benefits under this paragraph pursuant to a collective bargaining agreement under
9 subch. V ~~or VI~~ of ch. 111.

10 **SECTION 93.** 40.05 (4) (c) of the statutes is amended to read:

11 40.05 (4) (c) The employer shall contribute toward the payment of premiums
12 for the plan established under s. 40.52 (3) ~~not more than the percentage of premium~~
13 ~~paid by the employer for health insurance coverage under par. (ag) 2~~ the amount
14 established under s. 40.52 (3).

15 **SECTION 94.** 40.05 (4g) (a) 4. of the statutes is amended to read:

16 40.05 (4g) (a) 4. Has received a military leave of absence under s. 230.32 (3) (a)
17 or 230.35 (3), under a collective bargaining agreement under subch. V ~~or VI~~ of ch. 111
18 or under rules promulgated by the director of the office of state employment relations
19 or is eligible for reemployment with the state under s. 321.64 after completion of his
20 or her service in the U.S. armed forces.

21 **SECTION 95.** 40.05 (5) (intro.) of the statutes is amended to read:

22 40.05 (5) INCOME CONTINUATION INSURANCE PREMIUMS. (intro.) For the income
23 continuation insurance provided under subch. V the employee shall pay the amount
24 remaining after the employer has contributed the following or, if different, the

1 amount determined under a collective bargaining agreement under subch. I, V, ~~or VI~~
2 of ch. 111 or s. 230.12 or 233.10:

3 **SECTION 96.** 40.05 (5) (b) 4. of the statutes is amended to read:

4 40.05 (5) (b) 4. The accrual and crediting of sick leave shall be determined in
5 accordance with ss. 13.121 (4), 36.30, 230.35 (2), 233.10 and 757.02 (5) and subch. I,
6 V, ~~or VI~~ of ch. 111.

7 **SECTION 97.** 40.05 (6) (a) of the statutes is amended to read:

8 40.05 (6) (a) Except as otherwise provided in accordance with a collective
9 bargaining agreement under subch. I, V, ~~or VI~~ of ch. 111 or s. 230.12 or 233.10, each
10 insured employee under the age of 70 and annuitant under the age of 65 shall pay
11 for group life insurance coverage a sum, approved by the group insurance board,
12 which shall not exceed 60 cents monthly for each \$1,000 of group life insurance,
13 based upon the last amount of insurance in force during the month for which
14 earnings are paid. The equivalent premium may be fixed by the group insurance
15 board if the annual compensation is paid in other than 12 monthly installments.

16 **SECTION 98.** 40.22 (2) (n) of the statutes is created to read:

17 40.22 (2) (n) The employee is appointed to a limited term appointment under
18 s. 230.26.

19 **SECTION 99.** 40.23 (2m) (e) 2. of the statutes is amended to read:

20 40.23 (2m) (e) 2. For each participant for creditable service as an elected official
21 or as an executive participating employee that is performed before January 1, 2000,
22 2.165%; for such creditable service that is performed on or after January 1, 2000, but
23 before the effective date of this subdivision ... [LRB inserts date], 2%; and for such
24 creditable service that is performed on or after the effective date of this subdivision
25 ... [LRB inserts date], 1.6%.

1 **SECTION 100.** 40.32 (1) of the statutes is amended to read:

2 40.32 (1) The sum of all contributions allocated to a participant's account under
3 each defined contribution plan sponsored by the employer, including all employer
4 contributions and picked-up contributions credited with interest at the effective rate
5 under ss. 40.04 (4) (a) and (5) (b) and 40.05 (2) (g) and all employee contributions
6 made under ss. 40.02 (17) and 40.05 (1) ~~and (2m)~~, may not in any calendar year
7 exceed the maximum contribution limitation established under section 415 (c) of the
8 Internal Revenue Code.

9 **SECTION 101.** 40.51 (7) of the statutes is amended to read:

10 40.51 (7) Any employer, other than the state, may offer to all of its employees
11 a health care coverage plan through a program offered by the group insurance board.
12 Notwithstanding sub. (2) and ss. 40.05 (4) and 40.52 (1), the department may by rule
13 establish different eligibility standards or contribution requirements for such
14 employees and employers and may by rule limit the categories of employers, other
15 than the state, which may be included as participating employers under this
16 subchapter. Beginning on January 1, 2012, except as otherwise provided in a
17 collective bargaining agreement under subch. IV of ch. 111, an employer may not
18 offer a health care coverage plan to its employees under this subsection if the
19 employer pays more than 88 percent of the average premium cost of plans offered in
20 any tier with the lowest employee premium cost under this subsection.

21 **SECTION 102.** 40.52 (3) of the statutes is amended to read:

22 40.52 (3) The group insurance board, after consulting with the board of regents
23 of the University of Wisconsin System, shall establish the terms of a health insurance
24 plan for graduate assistants, for teaching assistants, and for employees-in-training
25 designated by the board of regents, who are employed on at least a one-third

1 full-time basis and for teachers who are employed on at least a one-third full-time
2 basis by the University of Wisconsin System with an expected duration of
3 employment of at least 6 months but less than one year. Annually, the director of the
4 office of state employment relations shall establish the amount that the employer is
5 required to pay in premium costs under this subsection.

6 **SECTION 103.** 40.62 (2) of the statutes is amended to read:

7 40.62 (2) Sick leave accumulation shall be determined in accordance with rules
8 of the department, any collective bargaining agreement under subch. I, V, ~~or VI~~ of
9 ch. 111, and ss. 13.121 (4), 36.30, 49.825 (4) (d), 49.826 (4) (d), 230.35 (2), 233.10,
10 757.02 (5) and 978.12 (3).

11 **SECTION 104.** 40.80 (3) of the statutes is amended to read:

12 40.80 (3) Any action taken under this section shall apply to employees covered
13 by a collective bargaining agreement under subch. V ~~or VI~~ of ch. 111.

14 **SECTION 105.** 40.81 (3) of the statutes is amended to read:

15 40.81 (3) Any action taken under this section shall apply to employees covered
16 by a collective bargaining agreement under subch. IV, or V, ~~or VI~~ of ch. 111.

17 **SECTION 106.** 40.95 (1) (a) 2. of the statutes is amended to read:

18 40.95 (1) (a) 2. The employee has his or her compensation established in a
19 collective bargaining agreement under subch. V ~~or VI~~ of ch. 111.

20 **SECTION 107.** 46.284 (4) (m) of the statutes is repealed.

21 **SECTION 108.** 46.2895 (8) (a) 1. of the statutes is amended to read:

22 46.2895 (8) (a) 1. If the long-term care district offers employment to any
23 individual who was previously employed by a county, which participated in creating
24 the district and at the time of the offer had not withdrawn or been removed from the
25 district under sub. (14), and who while employed by the county performed duties

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1 relating to the same or a substantially similar function for which the individual is
2 offered employment by the district and whose wages, ~~hours and conditions of~~
3 ~~employment~~ were established in a collective bargaining agreement with the county
4 under subch. IV of ch. 111 that is in effect on the date that the individual commences
5 employment with the district, with respect to that individual, abide by the terms of
6 the collective bargaining agreement concerning the individual's wages ~~and, if~~
7 ~~applicable, vacation allowance, sick leave accumulation, sick leave bank, holiday~~
8 ~~allowance, funeral leave allowance, personal day allowance, or paid time off~~
9 ~~allowance~~ until the time of the expiration of that collective bargaining agreement or
10 adoption of a collective bargaining agreement with the district under subch. IV of ch.
11 111 covering the individual as an employee of the district, whichever occurs first.

12 **SECTION 109.** 46.2898 of the statutes is repealed.

13 **SECTION 110.** 46.48 (9m) of the statutes is repealed.

14 **SECTION 111.** 49.175 (1) (zh) of the statutes is amended to read:

15 49.175 (1) (zh) *Earned income tax credit supplement.* For the transfer of
16 moneys from the appropriation account under s. 20.437 (2) (md) to the appropriation
17 account under s. 20.835 (2) (kf) for the earned income tax credit, \$6,664,200 in fiscal
18 year 2009-10 and ~~\$6,664,200~~ \$43,664,200 in fiscal year 2010-2011.

19 **SECTION 112.** 49.45 (2m) of the statutes is created to read:

20 49.45 (2m) AUTHORIZATION FOR MODIFICATIONS TO PROGRAMS; STUDY. (a) In this
21 subsection, "Medical Assistance program" includes any program operated under this
22 subchapter, demonstration program operated under 42 USC 1315, and program
23 operated under a waiver of federal law relating to medical assistance that is granted
24 by the federal department of health and human services.

1 (b) The department shall study potential changes to the Medical Assistance
2 state plan and to waivers of federal law relating to medical assistance obtained from
3 the federal department of health and human services for all of the following
4 purposes:

5 1. Increasing the cost effectiveness and efficiency of care and the care delivery
6 system for Medical Assistance programs.

7 2. Limiting switching from private health insurance to Medical Assistance
8 programs.

9 3. Ensuring the long-term viability and sustainability of Medical Assistance
10 programs.

11 4. Advancing the accuracy and reliability of eligibility for Medical Assistance
12 programs and claims determinations and payments.

13 5. Improving the health status of individuals who receive benefits under a
14 Medical Assistance program.

15 6. Aligning Medical Assistance program benefit recipient and service provider
16 incentives with health care outcomes.

17 7. Supporting responsibility and choice of medical assistance recipients.

18 (c) Subject to par. (d), if the department determines, as a result of the study
19 under par. (b), that revision of existing statutes or rules would be necessary to
20 advance a purpose described in par. (b) 1. to 7., the department may promulgate rules
21 that do any of the following related to Medical Assistance programs:

22 1. Require cost sharing from program benefit recipients up to the maximum
23 allowed by federal law or a waiver of federal law.

24 2. Authorize providers to deny care or services if a program benefit recipient
25 is unable to share costs, to the extent allowed by federal law or waiver.

1 3. Modify existing benefits or establish various benefit packages and offer
2 different packages to different groups of recipients.

3 4. Revise provider reimbursement models for particular services.

4 5. Mandate that program benefit recipients enroll in managed care.

5 6. Restrict or eliminate presumptive eligibility.

6 7. To the extent permitted by federal law, impose restrictions on providing
7 benefits to individuals who are not citizens of the United States.

8 8. Set standards for establishing and verifying eligibility requirements.

9 9. Develop standards and methodologies to assure accurate eligibility
10 determinations and redetermine continuing eligibility.

11 10. Reduce income levels for purposes of determining eligibility to the extent
12 allowed by federal law or waiver and subject to the limitations under par. (e) 2.

13 (d) Before promulgating a rule under par. (c), the department shall submit to
14 the joint committee on finance the proposed rule and any plan that the department
15 develops as a result of the study under par. (b). If the cochairpersons of the committee
16 do not notify the department within 14 working days after the date of the
17 department's submittal that the committee has scheduled a meeting for the purpose
18 of reviewing the proposed rule or plan, the proposed rule may be promulgated and
19 any plan may be implemented as proposed by the department. If, within 14 working
20 days after the date of the department's submittal, the cochairpersons of the
21 committee notify the department that the committee has scheduled a meeting for the
22 purpose of reviewing the proposed rule or plan, the proposed rule may be
23 promulgated, and the plan may be implemented only upon approval of the
24 committee.

1 (e) 1. The department shall submit an amendment to the state Medical
2 Assistance plan or request a waiver of federal laws related to medical assistance, if
3 necessary, to the extent necessary to implement any rule promulgated under par. (c).
4 If the federal department of health and human services does not allow the
5 amendment or does not grant the waiver, the department may not put the rule into
6 effect or implement the action described in the rule.

7 2. The department shall request a waiver from the secretary of the federal
8 department of health and human services to permit the department to have in effect
9 eligibility standards, methodologies, and procedures under the state Medical
10 Assistance plan or waivers of federal laws related to medical assistance that are more
11 restrictive than those in place on March 23, 2010. If the waiver request does not
12 receive federal approval before December 31, 2011, the department shall reduce
13 income levels on July 1, 2012, for the purposes of determining eligibility to 133
14 percent of the federal poverty line for adults who are not pregnant and not disabled,
15 to the extent permitted under 42 USC 1396a (gg), if the department follows the
16 procedures under 42 USC 1396a (gg) (3).

17 (f) Using the procedure under s. 227.24, the department may promulgate a rule
18 under par. (c) as an emergency rule. Notwithstanding s. 227.24 (1) (a) and (3), the
19 department is not required to provide evidence that promulgating a rule under
20 (c) as an emergency rule is necessary for the preservation of the public peace, health,
21 safety, or welfare and is not required to provide a finding of emergency for a rule
22 promulgated under par. (c). Notwithstanding s. 227.24 (1) (c) and (2), an emergency
23 rule promulgated under this paragraph remains in effect until whichever of the
24 following occurs first:

25 1. The effective date of the repeal of the emergency rule.

1 2. The date on which the permanent rule promulgated under par. (c) takes
2 effect.

3 **SECTION 113.** 49.45 (3) (n) of the statutes is created to read:

4 49.45 (3) (n) This subsection does not apply if the department promulgates a
5 rule under sub. (2m) (c) 4., to the extent that the rule conflicts with this subsection.

6 **SECTION 114.** 49.45 (6m) (n) of the statutes is created to read:

7 49.45 (6m) (n) This subsection does not apply if the department promulgates
8 a rule under sub. (2m) (c) 4., to the extent that the rule conflicts with this subsection.

9 **SECTION 115.** 49.45 (8) (b) of the statutes is amended to read:

10 49.45 (8) (b) Reimbursement Unless otherwise provided by the department by
11 rule promulgated under sub. (2m) (c), reimbursement under s. 20.435 (4) (b), (o), and
12 (w) for home health services provided by a certified home health agency or
13 independent nurse shall be made at the home health agency's or nurse's usual and
14 customary fee per patient care visit, subject to a maximum allowable fee per patient
15 care visit that is established under par. (c).

16 **SECTION 116.** 49.45 (8) (c) of the statutes is amended to read:

17 49.45 (8) (c) The department shall establish a maximum statewide allowable
18 fee per patient care visit, for each type of visit with respect to provider, that may be
19 no greater than the cost per patient care visit, as determined by the department from
20 cost reports of home health agencies, adjusted for costs related to case management,
21 care coordination, travel, record keeping and supervision, unless otherwise provided
22 by the department by rule promulgated under sub. (2m) (c).

23 **SECTION 117.** 49.45 (8r) of the statutes is amended to read:

24 49.45 (8r) PAYMENT FOR CERTAIN OBSTETRIC AND GYNECOLOGICAL CARE. The Unless
25 otherwise provided by the department by rule promulgated under sub. (2m) (c), the

1 rate of payment for obstetric and gynecological care provided in primary care
2 shortage areas, as defined in s. 36.60 (1) (cm), or provided to recipients of medical
3 assistance who reside in primary care shortage areas, that is equal to 125% of the
4 rates paid under this section to primary care physicians in primary care shortage
5 areas, shall be paid to all certified primary care providers who provide obstetric or
6 gynecological care to those recipients.

7 **SECTION 118.** 49.45 (8v) of the statutes is amended to read:

8 49.45 (8v) INCENTIVE-BASED PHARMACY PAYMENT SYSTEM. The department shall
9 establish a system of payment to pharmacies for legend and over-the-counter drugs
10 provided to recipients of medical assistance that has financial incentives for
11 pharmacists who perform services that result in savings to the medical assistance
12 program. Under this system, the department shall establish a schedule of fees that
13 is designed to ensure that any incentive payments made are equal to or less than the
14 documented savings unless otherwise provided by the department by rule
15 promulgated under sub. (2m) (c). The department may discontinue the system
16 established under this subsection if the department determines, after performance
17 of a study, that payments to pharmacists under the system exceed the documented
18 savings under the system.

19 **SECTION 119.** 49.45 (18) (ac) of the statutes is amended to read:

20 49.45 (18) (ac) Except as provided in pars. (am) to (d), and subject to par. (ag),
21 any person eligible for medical assistance under s. 49.46, 49.468, or 49.47, or for the
22 benefits under s. 49.46 (2) (a) and (b) under s. 49.471 shall pay up to the maximum
23 amounts allowable under 42 CFR 447.53 to 447.58 for purchases of services provided
24 under s. 49.46 (2). The service provider shall collect the specified or allowable
25 copayment, coinsurance, or deductible, unless the service provider determines that

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1 the cost of collecting the copayment, coinsurance, or deductible exceeds the amount
2 to be collected. The department shall reduce payments to each provider by the
3 amount of the specified or allowable copayment, coinsurance, or deductible. No
4 Unless otherwise provided by the department by rule promulgated under sub. (2m)
5 (c), no provider may deny care or services because the recipient is unable to share
6 costs, but an inability to share costs specified in this subsection does not relieve the
7 recipient of liability for these costs.

8 **SECTION 120.** 49.45 (18) (ag) (intro.) of the statutes is amended to read:

9 49.45 (18) (ag) (intro.) Except as provided in pars. (am), (b), and (c), and subject
10 to par. (d), a recipient specified in par. (ac) shall pay all of the following, unless
11 otherwise provided by the department by rule promulgated under sub. (2m) (c):

12 **SECTION 121.** 49.45 (18) (b) (intro.) of the statutes is amended to read:

13 49.45 (18) (b) (intro.) The Unless otherwise provided by the department by rule
14 promulgated under sub. (2m) (c), the following services are not subject to recipient
15 cost sharing under this subsection:

16 **SECTION 122.** 49.45 (18) (d) of the statutes is amended to read:

17 49.45 (18) (d) No person who designates a pharmacy or pharmacist as his or
18 her sole provider of prescription drugs and who so uses that pharmacy or pharmacist
19 is liable under this subsection for more than \$12 per month for prescription drugs
20 received, unless otherwise provided by the department by rule promulgated under
21 sub. (2m) (c).

22 **SECTION 123.** 49.45 (23) (a) of the statutes is amended to read:

23 49.45 (23) (a) The department shall request a waiver from the secretary of the
24 federal department of health and human services to permit the department to
25 conduct a demonstration project to provide health care coverage for basic primary

1 and preventive care to adults who are under the age of 65, who have family incomes
2 not to exceed 200 percent of the poverty line, and who are not otherwise eligible for
3 medical assistance under this subchapter, the Badger Care health care program
4 under s. 49.665, or Medicare under 42 USC 1395 et seq. If the department
5 promulgates a rule under sub. (2m) (c) 10., this paragraph does not apply to the
6 extent that it conflicts with the rule.

7 **SECTION 124.** 49.45 (23) (b) of the statutes is amended to read:

8 49.45 (23) (b) If the waiver is granted and in effect, the department may
9 promulgate rules defining the health care benefit plan, including more specific
10 eligibility requirements and cost-sharing requirements. Cost Unless otherwise
11 provided by the department by rule promulgated under sub. (2m) (c), cost sharing
12 may include an annual enrollment fee, which may not exceed \$75 per year.
13 Notwithstanding s. 227.24 (3), the plan details under this subsection may be
14 promulgated as an emergency rule under s. 227.24 without a finding of emergency.
15 If the waiver is granted and in effect, the demonstration project under this subsection
16 shall begin on January 1, 2009, or on the effective date of the waiver, whichever is
17 later.

18 **SECTION 125.** 49.45 (24g) (c) of the statutes is amended to read:

19 49.45 (24g) (c) The department's proposal under par. (a) shall specify increases
20 in reimbursement rates for providers that satisfy the conditions under par. (a) 1. or
21 2., and shall provide for payment of a monthly per-patient care coordination fee to
22 those providers. The department shall set the increases in reimbursement rates and
23 the monthly per-patient care coordination fee so that together they provide
24 sufficient incentive for providers to satisfy a condition under par. (a) 1. or 2. The
25 proposal shall specify effective dates for the increases in reimbursement rates and

1 the monthly per-patient care coordination fee that are no sooner than July 1, 2011.
2 If the department promulgates a rule under sub. (2m) (c) 4., this paragraph does not
3 apply to the extent that it conflicts with the rule.

4 **SECTION 126.** 49.45 (24r) (a) of the statutes is amended to read:

5 49.45 (24r) (a) The department shall implement any waiver granted by the
6 secretary of the federal department of health and human services to permit the
7 department to conduct a demonstration project to provide family planning, as
8 defined in s. 253.07 (1) (a), under medical assistance to any woman between the ages
9 of 15 and 44 whose family income does not exceed 200% of the poverty line for a family
10 the size of the woman's family. If the department promulgates a rule under sub. (2m)
11 (c) 10., this paragraph does not apply to the extent it conflicts with the rule.

12 **SECTION 127.** 49.45 (24r) (b) of the statutes is amended to read:

13 49.45 (24r) (b) The department may request an amended waiver from the
14 secretary to permit the department to conduct a demonstration project to provide
15 family planning to any man between the ages of 15 and 44 whose family income does
16 not exceed 200 percent of the poverty line for a family the size of the man's family.
17 If the amended waiver is granted, the department may implement the waiver. If the
18 department promulgates a rule under sub. (2m) (c) 10., this paragraph does not apply
19 to the extent it conflicts with the rule.

20 **SECTION 128.** 49.45 (25g) (c) of the statutes is amended to read:

21 49.45 (25g) (c) The department's proposal under par. (b) shall specify increases
22 in reimbursement rates for providers that satisfy the conditions under par. (b), and
23 shall provide for payment of a monthly per-patient care coordination fee to those
24 providers. The department shall set the increases in reimbursement rates and the
25 monthly per-patient care coordination fee so that together they provide sufficient

1 incentive for providers to satisfy a condition under par. (b) 1. or 2. The proposal shall
2 specify effective dates for the increases in reimbursement rates and the monthly
3 per-patient care coordination fee that are no sooner than January 1, 2011. The
4 increases in reimbursement rates and monthly per-patient care coordination fees
5 that are not provided by the federal government shall be paid from the appropriation
6 under s. 20.435 (1) (am). If the department promulgates a rule under sub. (2m) (c)
7 4., this paragraph does not apply to the extent it conflicts with the rule.

8 **SECTION 129.** 49.45 (27) of the statutes is amended to read:

9 49.45 (27) ELIGIBILITY OF ALIENS. A person who is not a U.S. citizen or an alien
10 lawfully admitted for permanent residence or otherwise permanently residing in the
11 United States under color of law may not receive medical assistance benefits except
12 as provided under 8 USC 1255a (h) (3) or 42 USC 1396b (v), unless otherwise
13 provided by the department by rule promulgated under sub. (2m) (c).

14 **SECTION 130.** 49.45 (39) (b) 1. of the statutes is amended to read:

15 49.45 (39) (b) 1. 'Payment for school medical services.' If a school district or a
16 cooperative educational service agency elects to provide school medical services and
17 meets all requirements under par. (c), the department shall reimburse the school
18 district or the cooperative educational service agency for 60% of the federal share of
19 allowable charges for the school medical services that it provides, unless otherwise
20 provided by the department by rule promulgated under sub. (2m) (c), and, as
21 specified in subd. 2., for allowable administrative costs. If the Wisconsin Center for
22 the Blind and Visually Impaired or the Wisconsin Educational Services Program for
23 the Deaf and Hard of Hearing elects to provide school medical services and meets all
24 requirements under par. (c), the department shall reimburse the department of
25 public instruction for 60% of the federal share of allowable charges for the school

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1 medical services that the Wisconsin Center for the Blind and Visually Impaired or
2 the Wisconsin Educational Services Program for the Deaf and Hard of Hearing
3 provides, unless otherwise provided by the department by rule promulgated under
4 sub. (2m)(c), and, as specified in subd. 2., for allowable administrative costs. A school
5 district, cooperative educational service agency, the Wisconsin Center for the Blind
6 and Visually Impaired or the Wisconsin Educational Services Program for the Deaf
7 and Hard of Hearing may submit, and the department shall allow, claims for common
8 carrier transportation costs as a school medical service unless the department
9 receives notice from the federal health care financing administration that, under a
10 change in federal policy, the claims are not allowed. If the department receives the
11 notice, a school district, cooperative educational service agency, the Wisconsin
12 Center for the Blind and Visually Impaired, or the Wisconsin Educational Services
13 Program for the Deaf and Hard of Hearing may submit, and the department shall
14 allow, unreimbursed claims for common carrier transportation costs incurred before
15 the date of the change in federal policy. The department shall promulgate rules
16 establishing a methodology for making reimbursements under this paragraph. All
17 other expenses for the school medical services provided by a school district or a
18 cooperative educational service agency shall be paid for by the school district or the
19 cooperative educational service agency with funds received from state or local taxes.
20 The school district, the Wisconsin Center for the Blind and Visually Impaired, the
21 Wisconsin Educational Services Program for the Deaf and Hard of Hearing, or the
22 cooperative educational service agency shall comply with all requirements of the
23 federal department of health and human services for receiving federal financial
24 participation.

25 **SECTION 131.** 49.46 (1) (n) of the statutes is created to read:

1 49.46 (1) (n) If the department promulgates a rule under s. 49.45 (2m) (c) 8.,
2 9., or 10., this subsection does not apply to the extent that it conflicts with the rule.

3 **SECTION 132.** 49.46 (2) (a) (intro.) of the statutes is amended to read:

4 49.46 (2) (a) (intro.) Except as provided in par. (be) and unless otherwise
5 provided by the department by rule promulgated under s. 49.45 (2m) (c), the
6 department shall audit and pay allowable charges to certified providers for medical
7 assistance on behalf of recipients for the following federally mandated benefits:

8 **SECTION 133.** 49.46 (2) (b) (intro.) of the statutes is amended to read:

9 49.46 (2) (b) (intro.) Except as provided in pars. (be) and (dc) and unless
10 otherwise provided by the department by rule promulgated under s. 49.45 (2m) (c),
11 the department shall audit and pay allowable charges to certified providers for
12 medical assistance on behalf of recipients for the following services:

13 **SECTION 134.** 49.465 (2) (intro.) of the statutes is amended to read:

14 49.465 (2) (intro.) ~~A~~ Unless otherwise provided by the department by rule
15 promulgated under s. 49.45 (2m) (c), a pregnant woman is eligible for medical
16 assistance benefits, as provided under sub. (3), during the period beginning on the
17 day on which a qualified provider determines, on the basis of preliminary
18 information, that the woman's family income does not exceed the highest level for
19 eligibility for benefits under s. 49.46 (1) or 49.47 (4) (am) or (c) 1. and ending as
20 follows:

21 **SECTION 135.** 49.47 (4) (a) (intro.) of the statutes is amended to read:

22 49.47 (4) (a) (intro.) ~~Any~~ Unless otherwise provided by the department by rule
23 under s. 49.45 (2m) (c), any individual who meets the limitations on income and
24 resources under pars. (b) to (c) and who complies with pars. (cm) and (cr) shall be
25 eligible for medical assistance under this section if such individual is: