
Wisconsin Legislative Council

INFORMATION MEMORANDUM



IM-2020-03

COVID-19 LEGISLATION PROPOSED BY GOVERNOR EVERS

On March 12, 2020, Governor Evers issued Executive Order #72, a proclamation declaring a public health emergency in response to the COVID-19 coronavirus. The Governor also requested a joint resolution to extend the executive order and a bill to implement Public Law 116-127, the federal Families First Coronavirus Response Act (H.R. 6201), and make other changes to current law in response to the COVID-19 outbreak. This information memorandum describes LRB 5904/1 (“the draft joint resolution”), which extends indefinitely the current public health emergency. This information memorandum also describes LRB-5920/P2 (“the bill draft”), relating to addressing the spread and containment of the COVID-19 coronavirus and making an appropriation. The bill draft addresses numerous subject areas, each of which is described below.

LRB-5904/1, A JOINT RESOLUTION TO EXTEND THE PUBLIC HEALTH EMERGENCY

Under **current law**, if the Governor determines that a public health emergency exists, he or she may issue an executive order declaring a state of emergency related to public health for the state or any portion of the state and may designate the Department of Health Services (DHS) as the lead state agency to respond to that emergency. A state of emergency declared by the Governor may not exceed 60 days, except that it may be extended by joint resolution of the Legislature. The executive order may also be revoked at any time by the Governor by executive order or by the Legislature by joint resolution. [[s. 323.10, Stats.](#)]

The **draft joint resolution** extends the public health emergency declared by Governor Evers in Executive Order #72, relating to the COVID-19 coronavirus. The extension authorized by the joint resolution is for an indefinite period of time and may be revoked by either a subsequent executive order of the Governor or a subsequent joint resolution of the Legislature.

If the Legislature does not extend the current public health emergency, it will expire on May 11, 2020. The Governor and DHS may exercise certain powers only during a public health emergency.¹

¹ Other actions taken as a part of Executive Order #72 may remain in effect beyond May 11, 2020, regardless of whether the public health emergency is extended, such as the Governor’s proclamation that the state is in period of abnormal economic disruption. [See. [s. 100.305, Stats.](#)]

LRB-5920/P2, RELATING TO ADDRESSING COVID-19

Elections

The **bill draft** makes several changes in election law to apply to elections that occur during a declared public health emergency. For such elections, the bill draft requires the election to be conducted entirely by mail-in absentee ballot; eliminates the requirement for voters to provide photo identification; exempts voters from obtaining a witness signature on an absentee ballot; extends the deadline for electronic voter registration; and provides additional money to the Wisconsin Elections Commission for costs related to extending electronic voter registration.

Absentee Voting by Mail

Under **current law**, voting is conducted at polling places on Election Day or by absentee ballot. Absentee voting may be conducted in-person at a clerk's office or other designated location ("in-person absentee") or by mailing in a completed absentee ballot to the appropriate clerk ("absentee voting by mail"). An individual absentee voting by mail must have an adult U.S. citizen witness and sign the individual's ballot.

The **bill draft** requires that all voting held during a declared public health emergency must be absentee voting by mail. Specifically, the bill draft states that voting at any election held during the period covered by an executive order declaring a public health emergency shall be conducted by mail using absentee ballots. The bill draft also provides that a witness signature is not required for these absentee ballots.

Counting of Absentee Ballots

Current law provides that an absentee ballot must be delivered to a polling place by 8 p.m. on Election Day to be counted.

The **bill draft** provides that a ballot voted absentee by mail during a declared public health emergency must be postmarked no later than the day of the election.

Voter ID Requirements

Current law generally requires a voter to provide proof of identification, often referred to as "Voter ID," before receiving an absentee ballot or receiving a ballot in person at a polling place. The Voter ID must be one of an enumerated list of documents and contain the voter's name and photograph.

Under the **bill draft**, a voter is not required to provide Voter ID to vote at any election held during a declared public health emergency.

Electronic Voter Registration

Current law generally requires a voter to register prior to voting, and provides several methods for registration with varying deadlines. Electronic registration is available to voters with a current and valid Wisconsin Driver's License or State Identification Card until 11:59 p.m. on the third Wednesday before the election.² A voter may register by mail, if the registration is

² The U.S. District Court for the Western District of Wisconsin recently issued a temporary restraining order enjoining the enforcement of the deadline for electronic registration for the April 7, 2020 election and ordering that the deadline be extended to March 30, 2020. [*Democratic National Committee, et al v. Bostelmann, et al*, 20-cv-249 (W.D. Wis. March 20, 2020).]

received or postmarked by the third Wednesday before the election. Alternatively, a voter may register in-person at the clerk's office until 5 p.m. or the close of business, whichever is later, on the Friday before the election. Finally, a voter may register in-person at the polling place on Election Day.

The **bill draft** extends the deadline for electronic voter registration during a declared public health emergency. Under the bill draft, electronic registration closes at 5 p.m. on the fifth day preceding the election. This deadline is the same as the deadline under current law for applying for an absentee ballot. The bill draft also increases the appropriation to the Wisconsin Elections Commission by \$1 million to fund costs associated with updating the voter registration system resulting from extending electronic registration.

Landlord and Tenant Provisions

Generally, under **current law**, if a tenant fails to pay rent or is otherwise in default of a lease or other agreement, a landlord may give written notice to the tenant that he or she is in default. There are two types of notice: a five-day notice and a 14-day notice. The former allows the tenant five days to pay rent or otherwise come into compliance; if the tenant does not do so, the tenancy terminates. The latter informs the tenant that he or she must vacate the premises within 14 days and does not give the tenant an opportunity to pay rent or otherwise come into compliance with the lease or agreement. After 14 days, the tenancy terminates. A tenant whose tenancy has terminated is not entitled to remain on the premises, and the landlord may take action to remove the tenant.

If a tenancy has terminated, a landlord may file an eviction action in small claims court. If the landlord prevails in the action, the court enters a judgment of eviction against the tenant and issues an order to a sheriff to remove the tenant from the premises (writ of restitution). A landlord may be entitled to additional monetary damages, including double rent for the period of time the tenant remained on the premises after the tenancy terminated.

If a landlord files an eviction action, a tenant may apply to DHS for emergency assistance in cases of fire, flood, natural disaster, homelessness, or impending homelessness. If a tenant applies for this assistance, an eviction action is stayed until the tenant receives the assistance or for 10 working days, whichever occurs first. Additionally, current law allows a judge, when issuing a writ of restitution, to stay the execution of the writ for up to 30 days if removing the tenant from the premises would cause hardship; the tenant is responsible for paying reasonable rent for the days he or she remains on the premises until the writ is executed and he or she is removed.

Under the **bill draft**, during a declared public health emergency and for 45 days after the public health emergency ends, no landlord may give a five- or 14-day notice to a tenant who has failed to pay rent, and may not charge a late fee for unpaid rent. No landlord may take action to remove a tenant from a premises for failure to pay rent, and no landlord may file an eviction action for failure to pay rent.

If a five- or 14-day notice was issued before a public health emergency is declared, the applicable time period is tolled until 45 days after the public health emergency terminates. If an action for eviction has been filed before the public health emergency, no court may enter a judgment of conviction or issue a writ of restitution that would authorize the removal of the tenant from the premises and, if a writ has already been issued, no sheriff may execute it, until 45 days after the public health emergency terminates.

The bill draft does not place restrictions on giving a five- or 14-day notice, filing an eviction action, or removing a tenant from the premises for a reason other than failure to pay rent.

Education

The **bill draft** makes changes to education laws applicable for periods or school years in which DHS orders school closures to control an outbreak or epidemic. The changes exempt the Department of Public Instruction (DPI) from publishing school report cards for the 2019-20 school year, create job and compensation protections for school employees, and expand DPI's authority to waive requirements imposed on schools.

School Report Card Exemption

Current law requires DPI to publish a school and school district accountability report each year, commonly referred to as "school report cards." DPI must assign each school district and individual school to one of five performance categories ranging from "Significantly Exceeds Expectations" (five stars) to "Fails to Meet Expectations" (one star).

The **bill draft** creates a one-year exemption from the requirement for DPI to publish school report cards for the 2019-20 school year.

School Employee Protections

Current law does not prohibit layoffs of school employees during ordered school closures, nor does it guarantee school employees continued compensation during such events.

The **bill draft** creates job and compensation protection for employees of public schools, charter schools, and private schools participating in the Milwaukee Parental Choice Program, the Racine Parental Choice Program, the Wisconsin Parental Choice Program, or the Special Needs Scholarship Program ("choice programs").

The bill draft prohibits the school districts and governing bodies of these schools from laying off a current employee during a period of DHS-ordered school closure. The bill draft also requires school districts and governing boards to continue to pay current employees for regularly scheduled hours at the employee's regular rate during such periods of closure, but allows a school to pay an employee more than the regular rate. The bill draft specifies that the school district or governing board must continue to pay current employees, regardless of whether an employee is required to report to work during the closure.

Waiver of Education Requirements

Current law imposes numerous requirements on public schools, more limited requirements on charter schools and private schools participating in choice programs, and a small number of requirements on other private schools. Current law also creates a process for individual school districts to request a DPI waiver from requirements in the education statutes (chs. 115 to 121, Stats.) and related administrative rules. However, DPI cannot waive statutes and rules relating to specific topics, such as required state assessments and the health or safety of students. Further, the current waiver process applies only to school districts and school district charter schools, and not to independent charter schools or private schools.

The **bill draft** expands DPI authority to waive requirements during a school year in which DHS orders school closures. Under the bill draft, DPI may waive any requirement on a public school district for that school year, including those requirements prohibited from waiver under current law. The bill draft also authorizes DPI to waive, for that school year, requirements imposed on

private schools and independent charter schools. Finally, if DPI is not required to publish school report cards for a particular school year, the bill draft permits DPI to waive any requirement related to the publication of those school report cards.

W-2 and Other Assistance Programs and Child Care Grant Programs

The **bill draft** expands and creates various programs administered by the Department of Children and Families (DCF) that provide assistance to eligible families and that relate to child care. The funding for and nature of each program affected by the bill draft are described below.

Funding

Temporary Assistance for Needy Families (TANF)

The **bill draft** allocates funds from the Temporary Assistance for Needy Families (TANF) federal block grant. Specifically, for fiscal year 2019-20, the bill increases by \$20 million the TANF operations fund for the purpose of operating and administering certain programs, and increases by \$80 million the TANF aids fund to provide aid to certain programs, as authorized by the bill draft. For fiscal year 2020-21, the TANF operation and aids funds are increased by the amount of their respective increases in fiscal year 2019-20 that were not spent in that fiscal year, as determined by the Secretary of the Department of Administration (DOA).

Specifically, the increased TANF allocations under the bill draft fund a cash benefit payment under the Wisconsin Works (W-2) program generally, as well as an expansion of the Wisconsin Shares child care subsidy and the job access loan programs, two programs that fall under W-2. The bill draft's TANF allocations also fund an expansion of an emergency assistance program for families, the creation of a short-term financial assistance program, and the creation of an essential workforce child care grant program.

The bill draft authorizes DCF to, pursuant to a current law procedure regarding passive review by the Joint Committee on Finance (JCF), reallocate TANF funds that are currently allocated for different purposes to the programs addressed by the bill draft, but prohibits the reverse, in that the funds allocated under the bill draft may not be used for other TANF purposes. However, the bill draft clarifies that DCF may reallocate funds among the programs authorized by the bill draft.

GPR Funding

The **bill draft** appropriates \$25 million of general purpose revenue (GPR) funds in fiscal year 2019-20 for the purpose of the essential workforce child care grant program³ and a child care hazard pay grant program, both to be administered by DCF.

Cash Benefit Payments Under W-2

W-2 is a program that provides employment preparation services, case management, and cash assistance to eligible families. An individual must meet nonfinancial and financial eligibility requirements, depending on the type of benefit.

Under **current law**, an individual must meet several **nonfinancial** criteria to be eligible for a W-2 employment position and a job access loan in a month. Though not exhaustive, examples of the nonfinancial eligibility requirements include:

³ The bill draft allows DCF to use either the TANF-allocated funds for the GPR funds for grants under the essential workforce child care grant program.

- The individual must be a U.S. citizen or qualifying alien.
- The individual must be a Wisconsin resident.
- Every parent in the individual's W-2 group⁴ must fully cooperate in good faith with efforts to establish paternity of any minor child of that parent, and with efforts to obtain child support payments, unless the parent has good cause for not cooperating.
- The individual has made a good faith effort to obtain employment and has not refused any bona fide job offer in the 180-day period prior to applying to the W-2 program.
- If the individual has applied for W-2 within the 180 days immediately preceding the current application, the individual has cooperated with the efforts of a W-2 agency to assist the individual in obtaining employment.
- The individual is not receiving federal or state supplemental security income payments or federal social security disability insurance payments.
- The individual must not be subject to the 48-month participation limit, which requires, subject to certain exceptions, that the total number of months in which an individual (or any adult member of the individual's W-2 group) has participated in or has received benefits under certain programs not to exceed 48 months, whether or not consecutive.
- No other individual in the W-2 group may be a participant in a W-2 employment position, though this requirement does not apply to an individual applying for a job access loan.
- The individual must assign to the state his or her rights to child support or maintenance accruing during the time that any assistance is paid.

Current law also requires that individuals meet the following **financial** criteria to qualify for a W-2 employment position and a job access loan:

- The assets of an individual's W-2 group may not exceed \$2,500, excluding vehicles valued up to \$10,000 and the value of one home serving as the homestead for the W-2 group.
- The gross income of the individual's W-2 group must be at or below 115 percent of the federal poverty line, counting all earned and unearned income, subject to various exceptions.

The **bill draft** allows for cash benefit payments under the W-2 program, but expands eligibility for this W-2 benefit by making inapplicable certain nonfinancial eligibility requirements, modifying the qualifying income threshold, and not applying asset limitations.

Specifically, the bill draft provides that, during the public health emergency declared in Executive Order #72, an individual who is facing an immediate and discrete financial crisis due to the COVID-19 pandemic is eligible for a cash benefit payment of \$653 per month under the W-2 program. Such individuals are eligible for the cash benefit payment if all of the following apply:

⁴ Like current law, the bill defines "Wisconsin Works group" to mean "an individual who is a custodial parent, all dependent children with respect to whom the individual is a custodial parent, and all dependent children with respect to whom the individual's dependent child is a custodial parent" and includes "any nonmarital coparent or any spouse of the individual who resides in the same household as the individual and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent."

- The individual's place of employment closes, the individual is furloughed or temporarily laid off, or the individual misses work due to a lack of available child care as a result of the pandemic.
- The individual meets the nonfinancial eligibility requirements outlined above, except the individual may be a custodial or noncustodial parent and the following requirements do **not** apply: making good faith efforts to obtain employment in the 180-day period preceding application; cooperating with the efforts of a W-2 agency to assist the individual in obtaining employment; being subject to the 48-month participation limit; and prohibiting eligibility when another individual in the W-2 group is participating in a W-2 employment position.
- The gross income of the individual's W-2 group is at or below 200 percent of the federal poverty line, with gross income calculated as provided under current law.

Job Access Loan Program

Under **current law**, an individual is eligible to receive a job access loan under the W-2 program if, in addition to meeting the nonfinancial and financial eligibility requirements for W-2 as described above, the individual meets all of the following conditions:

- Needs the loan to address an immediate and discrete financial crisis, which may not be the result of the individual's failure to accept a bona fide job offer or termination of a job without good cause.
- Needs the loan to obtain or continue employment, which may include a loan that is needed to repair or purchase a vehicle that is necessary to obtain or continue employment.
- Not be in default with respect to the repayment of any previous job access loan or repayment of any grant or wage overpayments.
- Not be a migrant worker.

However, job access loans related to vehicles have additional restrictions. Specifically, eligibility for a job access loan to repair or purchase a vehicle requires possession of a valid operator's license and proof of motor vehicle liability insurance. Also, an individual who is on probation, parole, or extended supervision must provide proof that the individual's supervising agent has granted permission to purchase a vehicle.

With regard to the terms of the loan, DCF is required to promulgate rules establishing the maximum and minimum loan amounts in any 12-month period and the terms and conditions of repayment. Under DCF rules, job access loans may be issued in an amount not less than \$25 and not more than \$1,600 in any 12-month period, with \$1,600 being the maximum allowable amount for all loans and the maximum allowable outstanding balance for each individual receiving a job access loan. The loan must be repaid within a 12-month period, though a maximum 24-month extension may be granted if deemed appropriate.

The **bill draft** generally expands eligibility to the job access loan program for certain individuals, by making inapplicable certain nonfinancial eligibility requirements, modifying the qualifying income threshold, and not applying asset limitations. The bill also modifies the amount and repayment of job access loans.

Specifically, the bill draft provides that, during the public health emergency declared in Executive Order #72, an individual who is facing an immediate and discrete financial crisis due to the COVID-19 pandemic is eligible for a job access loan if all of the following conditions apply:

- The individual meets the applicable W-2 nonfinancial eligibility requirements outlined above, except the individual may be a custodial or noncustodial parent.
- The gross income of the individual's W-2 group is at or below 200 percent of the federal poverty line, with gross income calculated as provided under current law.
- The individual meets the eligibility criteria under current law, in that the loan must be necessary to address an immediate and discrete financial crisis and to obtain or continue employment, and the individual may not be a migrant worker or in default for any prior repayments.

Under the bill draft, the maximum loan amount for a job access loan is \$1,600, regardless of any rules promulgated by DCF pursuant to its authority to set the minimum and maximum amounts. The bill draft also suspends, during the public health emergency, all payments on job access loans under the bill draft and current law.

Wisconsin Shares Program

Under **current law**, DCF administers the Wisconsin Shares program, which subsidizes child care costs for eligible W-2 and other low-income working families. The subsidy is available to enable parents with a child under age 13, or under age 19 if the child is disabled, to work or participate in certain work or educational activities. In order to qualify, parents must meet the applicable income, asset, employment, and educational requirements, and are required to pay a copay amount based on income, family size, and the number of children in care.

The **bill draft** requires that DCF, no later than 60 days after the bill draft's effective date, submit to the U.S. Department of Health and Human Services (DHHS) any request for a state plan amendment, waiver, or other federal approval necessary to expand Wisconsin Shares eligibility, as determined by DCF, to individuals who need child care services due to the COVID-19 pandemic.

If DHHS disapproves the request, DCF may not expand eligibility. Conversely, if DHHS approves the request or if no federal approval is necessary, DCF must expand eligibility to allow an individual who needs child care services due to the COVID-19 pandemic to receive a subsidy under Wisconsin Shares for child care services received during the public health emergency, regardless of any programmatic and eligibility requirements otherwise required by statute or administrative rule.

Emergency Assistance Program

DCF administers the emergency assistance program for qualifying families in cases of fire, flood, natural disaster, homelessness or impending homelessness, or energy crisis. Emergency assistance payments are one-time payments; an eligible applicant may receive assistance through the program no more than once in any 12-month period. Current administrative rules require program eligibility decisions (and any resulting payments) to be made within five working days of a person's application for the program.

Current law requires DCF to specify who is qualified to receive payments, by rule. DCF has specified that to receive assistance from the emergency assistance program, an applicant must meet certain nonfinancial and financial eligibility criteria. One of the nonfinancial criteria provides that the family must include one or more dependent children as defined under the W-2

program⁵, and a qualified caretaker relative with whom the child is or was living at the time that the emergency occurred.

Also under current law, a family meets the financial eligibility criteria if the gross income of the family does not exceed 115 percent of the poverty line, as determined by DCF, and the family's assets are at or below \$2,500 in combined equity value, excluding vehicles with an equity value of up to \$10,000 and one home. Gross income is calculated as provided under the W-2 program, but excludes kinship care payments and foster care payments, if the payment is on behalf of a child who is a relative.

The maximum emergency assistance payment varies based upon the size of the family. The current maximum payment amounts are as follows:

- \$258 per family member when the family has two members.
- \$172 per family member when the family has three members.
- \$129 per family member when the family has four or five members.
- \$110 per family member when the family has six or more members.

The **bill draft** expands the emergency assistance program during the public health emergency for an individual who suffers a loss of income due to the COVID-19. Specifically, the bill does all of the following:

- Expands the eligibility criteria to provide that a person who is 18 to 24 years of age and is not a parent or caretaker is eligible for an emergency assistance payment for suffering a loss of income due to the COVID-19 pandemic.
- For an applicant currently eligible for an emergency assistance payment, requires the family's income to be at or below 200 percent of the federal poverty line to be eligible for an emergency assistance payment for suffering a loss of income due to the pandemic, with gross income calculated as provided under the W-2 program.
- Limits the number of emergency assistance payments for loss of income due to the pandemic to one payment in a 12-month period. However, the bill draft provides that an applicant who is eligible to receive a payment under current law for his or her family may qualify for both of the following payments in a 12-month period: (1) the emergency assistance payment authorized under current law; and (2) the expanded emergency assistance payment for loss of income due to the pandemic.
- Specifies that the maximum payment for an emergency assistance payment for suffering a loss of income due to the pandemic is \$1,200.
- Requires DCF to establish a streamlined eligibility verification process for the purposes of administering the provisions of the bill draft related to emergency assistance payments. The

⁵ The W-2 program defines a "dependent child" as "a person who resides with a parent and who is under the age of 18 or, if the person is a full-time student at a secondary school or a vocational or technical equivalent and is reasonably expected to complete the program before attaining the age of 19, is under the age of 19." [s. 49.141 (1) (c), Stats.]

bill draft also specifies that the streamlined eligibility verification process does not need to be promulgated as an administrative rule and is not a guidance document.

Short-Term Financial Assistance Program

The **bill draft** creates a short-term financial assistance program, administered by DCF. The short-term financial assistance program provides cash payments to eligible families for up to four months. These payments are to pay for costs associated with housing, transportation, and other essential needs during the public health emergency. Under the bill draft, a person is eligible for short-term financial assistance if the person is financially affected by the pandemic and meets all of the following criteria:

- Is a custodial or noncustodial parent.
- Has attained the age of 18.
- Is a U.S. Citizen or a qualifying alien, as defined by DCF, by rule.
- Has residence in Wisconsin.
- Is not receiving any public benefits within the 12 months prior to the date of application.
- Is not receiving a W-2 benefit on the date that the person applies for short-term financial assistance.

DCF may establish eligibility criteria and guidelines for administering the program, which need not be promulgated as administrative rules and are not considered guidance documents.

Essential Workforce Child Care Grant Program

The **bill draft** creates an essential workforce child care grant program. Under the program, DCF must make grants available to entities that employ, contract with, or have as volunteers essential workforce members⁶ to help pay for or reimburse eligible child care costs. Eligible child care costs are those due to the pandemic and incurred during the public health emergency, including the cost to establish a temporary facility to provide care and supervision for essential workforce members' children or the cost to pay for a slot in an existing facility that provides care and supervision of children.

The bill draft requires that DCF prioritize grants that assist health care workers and employees of or volunteers for agencies that provide firefighting, law enforcement, medical, or other emergency services. At its discretion, DCF may also award grants that assist other essential workforce members. DCF may establish eligibility criteria and guidelines for administering the program, which need not be promulgated as administrative rules and are not considered guidance documents.

⁶ The bill defines "essential workforce member" as "an employee, contractor, or other staff person working in a vital sector, including health care; child welfare; long-term care; residential care; pharmacy; child care; government operations; critical infrastructure, such as sanitation, transportation, utilities, telecommunications, grocery, and food services; supply chain operations; and other sectors as determined by [DCF]."

Child Care Hazard Pay Grant Program

The **bill draft** creates a grant program providing child care hazard pay. Specifically, the bill draft requires that DCF make monthly grants available to the following types of child care providers to pay for providing hazard pay to employees who work during the public health emergency:

- Child care providers certified under s. 48.651, Stats., meaning providers who are not licensed but are eligible to receive payments for child care services through the Wisconsin Shares program.
- Child care centers licensed under s. 48.65, Stats., meaning the center generally provides care and supervision for four or more children under the age of seven, and is therefore required to be licensed by DCF.
- Child care centers provisionally licensed under s. 48.69, Stats., meaning the center has applied for a license, meets certain minimum requirements, and has received a probationary license generally valid for six months.
- Child care centers established or contracted for by school boards under s. 120.13 (14), Stats.

Under the bill draft, a child care provider or center's eligibility for hazard pay grants is not impacted by whether the child care provider or center provides child care services to individuals who are eligible for a child care subsidy under Wisconsin Shares. Additionally, DCF may establish eligibility criteria and guidelines for administering the program, which need not be promulgated as administrative rules and are not considered guidance documents.

Health and Human Services

The **bill draft** changes various state laws related to health and human services. Briefly, it expands the authority of the DHS to act in response to a public health emergency, and creates a sum-sufficient appropriation to allow DHS to provide services, enter contracts, and make grants and awards related to the emergency. It appropriates GPR to allow DHS to hire 64 additional public health employees and to increase aid to local health departments through fiscal year 2020-21. It also temporarily removes provisions in state law related to legislative authorization and oversight of requests made to the federal government by DHS.

Additionally, the bill allows DOA to award grants to eligible health care providers to assist with costs relating to an outbreak of COVID-19. Also, the bill draft authorizes DOA to provide specified services related to the outbreak if an eligible provider is not available. Public Health Emergency Authority

The **bill draft** expands DHS's authority to act in response to a public health emergency. Under current law, the Governor may issue an executive order declaring a state of emergency related to public health based on a determination of a public health emergency, as defined in the statutes. The Governor may designate DHS as the lead state agency to respond to that emergency.

The bill draft provides that during a public health emergency declared by the Governor, DHS possess all powers necessary to respond to that emergency. This includes making expenditures of public health emergency funds, as described below. In addition, subject to the approval of the Governor, DHS may confidentially investigate the cause and extent of any declared public health emergency and issue such orders and public health advisories as it determines are necessary to protect public health, without regard to current law requirements related to guidance documents that might otherwise apply.

Under the bill draft, DHS must retain the confidentiality of any patient specific information that it collects, notwithstanding certain confidentiality laws.

The bill draft also modifies the definition of a “public health emergency” to mean the occurrence or imminent threat of an illness or health condition that meets any one of the following criteria:

- Is caused or suspected to be caused by a biological agent, toxin, bioterrorism, or other threat to health.
- Poses a high probability of a large number of deaths or serious or long-term disabilities among humans.
- Poses a high probability of a significant risk of substantial future harm to a large number of people.

This is a broader definition of the term, as compared to current law, because it requires that only one criterion be met, rather than multiple criteria, in order to create a public health emergency. The bill draft also expands the first criterion by adding toxins and other threats to health, which are not included under current law. It streamlines the third criterion by eliminating a requirement that it be created by a widespread exposure to a biological, chemical, or radiological agent.

Public Health Emergency Funding

Sum-Sufficient Appropriation

The **bill draft** creates a sum-sufficient appropriation to allow DHS to access public health emergency funds to act in response to a declared public health emergency. It provides that DHS may use the funds for any of the following purposes:

- To facilitate coordination among federal, state, local, and tribal agencies, social services, and public and private health care entities that may be affected by the emergency.
- To make grants, provide for awards, enter into contracts, and conduct supportive investigations pertaining to the emergency.
- To facilitate advanced research, purchase products, and develop security measures or pandemic or epidemic products that are applicable to the emergency.
- To strengthen biosurveillance capabilities and laboratory capacity to identify, collect, and analyze information regarding the emergency.
- To support emergency operations related to the emergency, including investigation, education, and eradication.
- To carry out other activities as the state health officer determines applicable and appropriate. As provided under current law, the term “state health officer” refers to an individual appointed by the Secretary of DHS to develop public health policy and direct public health programs.
- To create a full-time equivalent position funded by public health emergency funds. After the termination of the public health emergency, DHS may abolish a full-time equivalent position funded by public health emergency funds.

A report on expenditures of public health emergency funds, as specified above, must be submitted by DHS to the Legislature and the Governor no later than 12 months after the termination of the public health emergency.

Additional Hiring Authority

The **bill draft** increases DHS' authorized number of full-time equivalent positions by 64 positions to allow DHS to hire additional employees to address public health issues. The bill draft appropriates GPR to fund the positions, in the amounts of \$2.07 million for fiscal year 2019-20 and \$8.28 million for fiscal year 2020-21. The Secretary of DHS may request a waiver from DOA of certain civil service requirements for the recruitment and hiring of the positions during a public health emergency declared by the Governor or the federal Secretary of DHHS.

Federal Funding for Medicaid

The **bill draft** allows DHS to make temporary changes to the Medicaid program to allow the state to receive enhanced federal funding under Public Law 116-127, which provides a 6.2 percent temporary increase to the federal medical assistance percentage (FMAP) of qualifying states. The FMAP is used to determine the share of state expenditures under the Medicaid program that will be reimbursed with federal funds. The increase will take effect retroactively, as of January 1, 2020, and extend through the calendar quarter in which the federal public health emergency dated January 31, 2020, terminates, including any extensions. The Act requires states to do all of the following to qualify for the temporary FMAP increase:

- Maintain eligibility standards, methodologies, or procedures that are no more restrictive than as of January 1, 2020.
- Not charge premiums that exceed those as of January 1, 2020.
- Provide coverage with no cost-sharing requirements of testing, services, and treatments related to COVID-19—including vaccines, specialized equipment, and therapies.
- Provide continuous coverage under Medicaid, through at least the end of the month in which the emergency period ends, to all participants who were enrolled on or after March 18, 2020, regardless of any change in circumstances that otherwise would result in a termination of eligibility, unless an individual requests a voluntary termination or is no longer a resident of the state.

In order to allow the state to receive the enhanced federal funding, as specified above, the bill draft authorizes DHS to suspend compliance with any conflicting provisions of state Medicaid law, codified as subch. IV of ch. 49, Stats. DHS may submit a request for a waiver or other federal approval as necessary to obtain the enhanced federal funding.

Waivers and State Plan Amendments

The bill draft temporarily removes provisions in state law related to legislative authorization and oversight of requests made to the federal government by DHS. Under **current law**, DHS may not submit such a request without the approval of JCF, according to a process set forth in the statutes. Current law also prohibits DHS from submitting a state plan amendment or proposed change to a Medicaid reimbursement rate—if the expected fiscal effect would surpass \$7.5 million—without approval from JCF, according to a process set forth in the statutes. The **bill draft** suspends these approval requirements during a public health emergency declared by the Governor or the federal Secretary of DHHS.

Health Care Provider Grants and Services

The **bill draft** allows DOA to award grants to eligible health care providers to assist with costs relating to an outbreak of COVID-19. The bill draft appropriates GPR funding of a sum certain amount of \$50 million to the grant program for the fiscal biennium. The grants may only be used for one or more of the following purposes:

- Establishment and operation of temporary sites to provide testing services or treatment beds or to isolate or quarantine affected individuals.
- Temporary conversion of space for another purpose that after a COVID-19 outbreak will revert to its original use.
- Staff overtime and hiring of additional staff.
- Staff training and orientation.
- Purchasing of consumable protective or treatment supplies and equipment to protect or treat staff, visitors, and patients.
- Development and implementation of COVID-19 screening and testing procedures.
- Patient outreach activities related to COVID-19.
- Emergency transportation of patients that exceeds usual capacity.
- Information technology and systems costs to support telehealth activities, patient triage, and COVID-19 screening.
- Purchasing replacement parts or filters that are necessary for the operation of medical equipment.
- Specialty cleaning supplies for facilities and equipment.
- Expenses related to the isolation and quarantine of staff, except for the payment of wages for the staff being isolated or quarantined.
- Expenses that assist with responding to an outbreak of COVID-19 but that, in the determination of the Secretary of DOA, cannot reasonably be expected to generate income for the grant recipient after the outbreak ends.

The grants must be awarded under an application process and eligibility criteria determined by DOA. If it is determined that a recipient of a grant has used the funds for a purpose not authorized under the bill draft or has otherwise violated the grant agreement, the bill draft requires the Secretary of DOA to terminate the grant agreement and seek recovery of funds through any available remedy. DOA may determine the application process and eligibility criteria for the health care provider grant program, as specified above, without regard to current law requirements related to administrative rules or guidance documents that might otherwise apply.

Additionally the bill draft allows the Secretary of DOA to expend funds appropriated to the grant program, as specified above, to provide specified services in connection with the outbreak of COVID-19 if no eligible provider is reasonably capable of doing so. The services may include establishing temporary sites and operating, or directing local units of government and eligible providers to operate, the temporary sites to provide testing services and treatment beds for an outbreak of COVID-19 and to isolate or quarantine individuals affected by an outbreak of COVID-19.

A report on expenditures made under the health care provider grant program must be submitted by DOA to the Legislature and the Governor no later than 12 months after the termination of the public health emergency.

Separately from the grant program, the bill draft allows DOA to expend additional funds in response to a public health emergency declared by the Governor. The bill draft creates a sum-sufficient appropriation to allow DOA to expend funds for this purpose, provided that no more than \$200 million be expended from the appropriation in any fiscal biennium without JCF approval, according to a process set forth in the bill draft. It provides that DOA may expend the funds for all of the following:

- To facilitate coordination among federal, state, local, and tribal agencies, social services, and public and private health care entities that may be affected by the emergency.
- To award grants and enter contracts pertaining to the emergency.
- To support emergency operations related to the emergency, including investigation, education, and eradication.
- Expenditures for information technology directly related to the emergency, as determined by the Secretary of DOA.
- Facilities expenditures directly related to the emergency, as determined by the Secretary of DOA.
- Personnel costs, including all salary, fringe, overtime, and additional leave benefits, for any state agency, if those costs are directly related to the emergency, as determined by the Secretary of DOA.
- Purchasing of goods and services as provided under state procurement laws, directly related to the emergency, as determined by the Secretary of DOA.
- Expenditures for continuity of state government directly related to the emergency, as determined by the Secretary of DOA.
- Carrying out other activities as the Secretary of DOA determines applicable and appropriate.

A report on expenditures made under the sum-sufficient appropriation, as specified above, must be submitted by DOA to JCF no later than 75 days after first expending any funds, and no later than at the end of each subsequent month in which DOA expends any additional funds.

Health Insurance

Telehealth Parity

The **bill draft** prohibits a health insurance policy, including a health insurance policy that covers state employees or a self-insured health plan of the state or a county, city, village, town, or school district, from denying coverage for a treatment or service provided through telehealth if that treatment or service is covered under the policy or plan when provided in person by a health care provider. The bill draft defines “telehealth” as a practice of health care delivery, diagnosis, consultation, treatment, or transfer of medically relevant data by means of audio, video, or data communications that are used either during a patient visit or a consultation or are used to transfer medically relevant data about a patient.

The bill draft also allows the Commissioner of Insurance to promulgate any rules necessary to implement the bill draft’s telehealth parity provisions.

Prohibiting Certain Prescription Drug Coverage Limits

The **bill draft** prohibits insurers that offer health insurance, self-insured governmental health plans, and pharmacy benefit managers from requiring prior authorization for early refills of a prescription drug or otherwise restricting the period of time in which a prescription drug may be refilled and from imposing a limit on the quantity of prescription drugs that may be obtained if the quantity is no more than a 90-day supply. These prohibitions do not apply if the prescription drug is a controlled substance.

Insurance Regulations During a Public Health Emergency

Payments for Services by Out-of-Network Providers

The **bill draft** creates a number of new regulations that apply during a public health emergency declared either by the Governor or by the Secretary of DHHS. Specifically, the bill draft prohibits a defined network plan, including a health maintenance organization, or preferred provider plan from requiring an enrollee of the plan to pay more for a service, treatment, or supply provided by an out-of-network provider than what the enrollee would pay for a service, treatment, or supply provided by a provider in the plan's network. However, this prohibition applies only to a service, treatment, or supply that is related to diagnosis or treatment for the condition for which the public health emergency is declared and that is provided by a provider that is not a participating provider because a participating provider is unavailable due to the public health emergency. For a service, treatment, or supply provided under those circumstances, the bill draft requires the plan to reimburse the out-of-network provider at 250 percent of the federal Medicare program rate.

The bill draft also provides that, during a declared public health emergency, any health care provider or facility that provides a service, treatment, or supply to an enrollee of a defined network or preferred provider plan, but is not a participating provider of that plan, must accept as payment in full any payment by a plan that is at least 250 percent of the federal Medicare program rate and may not charge the enrollee an amount that exceeds the amount the provider or facility is reimbursed by the plan.

The bill draft also allows the Commissioner of Insurance to promulgate any rules necessary to implement the bill draft's provisions relating to out-of-network payments during a public health emergency.

Public Employee Insurance Continuation

Under **current law**, a state or local public employee may arrange to continue health insurance coverage that is provided through the state's group health insurance program during an unpaid leave of absence. Upon returning to work, the employee again becomes eligible for employer contributions when the unpaid leave is deemed to have "ended" as defined in the statutes. A leave of absence is not ended or interrupted if the employee returns to work until the employee has resumed working for 30 consecutive calendar days for at least 50 percent of what is considered that employee's normal work time with that employer.

Under the **bill draft**, for the purposes of group health insurance offered by the Group Insurance Board to an employee, an employee who returns from a leave of absence, but who has not yet been working for at least 30 consecutive calendar days on the effective date of a declared public health emergency, is deemed to have ended or interrupted the leave of absence on the declaration date.

Health Insurance Coverage Relating to COVID-19

The **bill draft** includes provisions requiring health insurers to provide certain coverage and follow certain regulations relating to COVID-19. Specifically, the bill draft requires every health insurance policy and every self-insured governmental health plan that generally covers testing for and treatment of infectious disease to provide coverage of testing for, treatment of, and administration of any vaccination developed to prevent COVID-19 without imposing any copayment or coinsurance.

The bill draft also prohibits insurers that offer an individual or group health benefit plan, pharmacy benefit managers, and self-insured governmental health plans from doing any of the following based on a current or past diagnosis or suspected diagnosis of COVID-19:

- Establishing rules for the eligibility of any individual, employer, or group to enroll or remain enrolled in a plan or for the renewal of coverage under the plan.
- Cancelling coverage during a contract term.
- Setting rates for coverage
- Refusing to grant a grace period for payment of a premium that would generally be granted.

Insurance

The **bill draft** includes a nonstatutory provision that provides that, during the period covered by Executive Order #72, notwithstanding any contrary provision of the state insurance statutes (chs. 600 to 655, Stats.), no insurer may cancel any policy of insurance for nonpayment of premiums until at least 90 days after the unpaid premium was due.

Additionally, as it relates to liability insurance for physicians and nurse anesthetists, the bill draft provides that, during the public health emergency declared under Executive Order #72, financial responsibility requirements may be shown by an alternative method. Specifically, a physician or nurse anesthetist for whom Wisconsin is not a principal place of practice but who is temporarily authorized to practice in Wisconsin, may fulfill financial responsibility requirements by filing a certificate of insurance for a policy of health care liability insurance. These providers may also elect to be covered by Wisconsin's health care liability laws.

Occupational Regulation

Prescription Order Extensions

The **bill draft** allows a pharmacist to extend an expired prescription order during a declared public health emergency, as long as the pharmacist has not received and is not aware of written or oral instructions from the prescribing health care provider prohibiting further dispensing. The pharmacist may not, however, extend a prescription for a controlled substance. Under this exception, the pharmacist may make only one extension and may not dispense more than a 30-day supply, except that the pharmacist may dispense a larger quantity if the drug is typically packaged in a form that requires dispensing in a larger quantity.

Temporary Emergency Credentials

The **bill draft** allows the Department of Safety and Professional Services (DSPA) to grant temporary credentials to former health care providers and to health care providers from other states during the period that the public health emergency declared in Executive Order #72 is in effect. These temporary credentials expire 90 days after the conclusion of that emergency,

including any extension thereof. Temporary emergency credentials may be granted to any of the following regulated professions: registered nurse; licensed practical nurse; nurse-midwife; dentist; physician; physician assistant; perfusionist; respiratory care practitioner; pharmacist; psychologist; clinical social worker; marriage and family therapist; professional counselor; independent social worker; certified social worker; clinical substance abuse counselor; or any other profession identified by DHS.

More specifically, DSPS may grant a temporary credential to a former health care provider if: (1) the person held the credential at any time within the previous five years; (2) the credential was never revoked, limited, suspended, or denied renewal; and (3) DSPS determines, after conducting an investigation of the person's arrest or conviction record and record of professional discipline, that the person satisfies eligibility requirements for the credential and is fit to practice.

DSPS may grant a temporary credential to a health care provider from another state if: (1) the person holds a valid, unexpired license, certificate, or registration granted by another state or territory that authorizes or qualifies the person to perform acts that are substantially the same as the acts authorized or qualified for the credential under Wisconsin law; and (2) DSPS determines, after conducting an investigation of the person's arrest or conviction record and record of professional discipline, that the person satisfies eligibility requirements for the credential and is fit to practice.

Temporary credential holders are required to maintain the malpractice insurance that is otherwise required for the profession.

Fee Waivers

The **bill draft** allows DSPS to waive application fees during the public health emergency declared in Executive Order #72 for an initial credential or for a credential renewal in any of the following professions: registered nurses; licensed practical nurses; nurse-midwives; dentists; physicians; physician assistants; perfusionists; respiratory care practitioners; pharmacists; psychologists; clinical social workers; marriage and family therapists; professional counselors; independent social workers; certified social worker; and clinical substance abuse counselors.

Credential Renewals

The **bill draft** exempts certain health care providers from renewal requirements, including continuing education requirements, during the public health emergency declared in Executive Order #72, including any extension thereof. The applicable credentialing board may specify a subsequent renewal date.

Employment

Unemployment Insurance

Under **current law**, when a person first applies for unemployment insurance benefits each year, there is a one-week waiting period before benefits will be paid out for any additional weeks that are claimed. The benefits due for the week of the waiting period are paid out when the person reaches the maximum benefit amount in the person's benefit year. Under Public Law 116-127, for the state to be eligible for an emergency administration grant under the Act, among other eligibility criteria, the state must demonstrate steps it has taken to ease access to unemployment compensation for claimants, including specifically waiving the waiting period. Also, if benefits are extended due to high unemployment rates, under the act, a state that does

not have a waiting period or that temporarily suspends a waiting period is eligible for a temporary federal match for administration costs for the first week of extended benefits at either 50 percent or 100 percent, depending on other qualifications for the grants.

The **bill draft** repeals the one-week waiting period to receive unemployment benefits.

State Employees

Limited Term Employees

Under **current law**, the Division of Personnel Management (DPM) in DOA may provide rules for the selection and appointment for limited term employment, commonly referred to as LTE positions. LTE positions are provisional appointments for less than 1,040 hours per year.

The **bill draft** allows DPM to increase or suspend the number of hours for an LTE position for the duration of a declared public health emergency.

Probationary Period

Under **current law**, a state employee may use annual leave in a current calendar year that has not yet accrued, with approval of the appointing authority. However, an employee who has not yet completed the first six months of a probationary period may not use annual leave in the calendar year (other than leave that accrued while serving in a different position in the unclassified service).

The **bill draft** allows an employee to take annual leave within the first six months of a probationary period during a declared public health emergency.

Sabbatical

Under **current law**, a state employee may defer accumulated annual leave to be used in a subsequent year as accumulated sabbatical leave, subject to certain limits.

The **bill draft** allows DPM to approve sabbatical leave for an employee who is providing critical services during a declared public health emergency. The sabbatical leave for this purpose is in addition to any other leave, including accumulated sabbatical leave, which is otherwise available to the employee.

Grievance Procedure

Under **current law**, a state employee may file a complaint to challenge an adverse employment decision to demote, layoff, suspend without pay, discharge, or reduce pay for the employee. If the employee files a complaint, the investigation of the complaint must include an in-person meeting with the employee. The complaint must be filed within 14 days of being informed of the adverse employment decision, and further appeals to DPM and then to the Wisconsin Employment Relations Commission must each be filed within 14 days of those decisions, or the right to challenge at each stage is waived.

The **bill draft** specifies that an in-person meeting while investigating an employee's complaint to challenge an adverse employment decision is not required during a declared public health emergency. The bill draft also suspends the appeal deadlines and resumes counting applicable filing periods 14 days after a declared public health emergency terminates.

Personnel Files

Under **current law**, a public or private employer must allow an employee access to the employee's personnel file. Among the procedures to request and receive access to the records, an employer is required to provide an opportunity to inspect the records within seven working days of the employee's request, and the inspection must take place during normal working hours at a location at or reasonably near the employee's place of employment.

The **bill draft** specifies that the time and location requirements for an employee to inspect his or her personnel records do not apply during a declared public health emergency.

Retirement

WRS Annuities for Certain Annuitants Returning to Work During Public Health Emergency

Current law provides that when a Wisconsin Retirement System (WRS) annuitant⁷ returns to employment with a WRS-participating employer to a position in which he or she is expected to work at least two-thirds of what is considered full-time employment as defined by the Department of Employee Trust Funds (ETF), his or her annuity is suspended and no annuity is payable until after the participant terminates WRS-covered employment. This provision effectively limits WRS annuitants who seek to return to WRS-covered employment to positions where work is expected to involve less than 1,200 hours annually⁸ or to suspend their annuities and return to WRS-covered employment.

The **bill draft** permits annuitants to return to WRS-covered employment without a limit on hours or suspension of their annuities when they are hired for critical positions. A critical position is defined as a position that, based on guidance provided by the Secretary of DHS, the head of each state agency, and each local health department determines to be critical within the respective state agency or unit of local government, when the Governor declares a state of emergency related to a public health emergency. The bill draft also requires that the returning annuitant, at the time he or she terminates employment with a WRS-participating employer, may not have an agreement with any WRS-participating employer to return to WRS-participating employment or contract to provide employee services for a WRS-participating employer.

Current law also provides that a WRS participant does not qualify for an annuity,⁹ or receive benefits that are conditioned on receipt of an annuity, unless 75 days have elapsed between the termination of WRS-covered employment and the return to WRS-covered employment. Payments made in violation of this provision must be retained from future annuity payments unless voluntarily repaid by the participant. This separation-from-service statute is based on federal law requirements that a qualified state plan must contain a provision under which employees demonstrate a good-faith intent to terminate employment at the time of retirement.

⁷ These provisions also apply to disability annuitants who have attained their normal retirement dates.

⁸ Two-thirds of what is considered full-time employment as used under ss.40.22 and 40.26, Stats., has been determined by ETF as 1,200 hours for employees who are not teachers or educational support personnel. These categories of employees have a lower defined hourly standard due to the school year. Two-thirds of full-time employment is defined as 880 hours for these categories.

⁹ This provision also applies to the lump sum payments of participants whose pension balances are not sufficient to receive a monthly annuity.

The **bill draft** reduces the 75-day separation from service to 15 days for individuals who are returning to WRS-covered employment in critical positions, as described above.

Military Affairs

The Department of Military Affairs (DMA) includes the Wisconsin National Guard and the Division of Emergency Management. DMA and the National Guard are headed by the Adjutant General. Under **current law**, the Adjutant General serves as the Governor's principal assistant for directing and coordinating emergency management activities and has a number of statutory duties with respect to emergency management. Under current law, the Administrator of the Division of Emergency Management (Administrator) may also exercise authority delegated to him or her by the Governor during a state of emergency.

The **bill draft** authorizes DMA to expend public moneys for various purposes during a state of emergency related to public health. Specifically, DMA may expend public moneys for any of the following purposes:

- To facilitate coordination between and among federal, state, local, and tribal agencies, social services, and public and private health care entities that the Administrator or the state health officer determines may be affected by the public health emergency.
- To make grants, provide for awards, enter into contracts, and conduct supportive investigations pertaining to the public health emergency or potential public health emergency.
- To support emergency operations related to the public health emergency, including investigation, education, and eradication.
- To carry out other activities related to the public health emergency as the Administrator or the state health officer determines applicable and appropriate.

The **bill draft** also provides a sum-sufficient appropriation to DMA, which may not exceed \$300 million in a fiscal biennium, to pay the public health emergency costs listed above. The bill draft specifies that DMA may submit a request to JCF, under s. 13.10, Stats., to exceed that limit and provides for the expedited approval of such a request. Specifically, under the bill draft, the request is approved if any of the following occur:

- JCF approves the request or modifies and approves the request.
- No member of JCF objects to the request within 24 hours after the request.
- If a JCF member objects to the request, JCF does not approve, reject, or modify the request within 48 hours.

The **bill draft** also allows JCF to vote on a s. 13.10 request to exceed the limit, described above, by mail ballot and without first holding a public hearing on the request.

Finally, the bill draft requires DMA to report to JCF on expenditures made to pay the public health emergency costs authorized by the bill draft. Specifically, DMA must submit a report to JCF in each fiscal year, no later than 75 days after first expending moneys for these purposes, and no later than the end of each month after that in which DMA expends moneys authorized by the bill draft.

Emergency Management

Suspension of Deadlines

The **bill draft** suspends, or tolls, any deadline required under state law, including any tax filing deadline, if the deadline arises during a declared public health emergency, including any extensions of the declaration, or during the 30 days after the declaration terminates. The tolling applies to any deadline faced by an individual, a political subdivision of the state, or the following state entities: any office, department, institution of higher education, association, society, other body in state government, or authority.

The tolling does not apply to the Legislature or the courts, including any statute of limitations for commencing an action in any court. It also does not apply to a private nonindividual entity, such as a corporation.

If a deadline is tolled by operation of this provision, the individual or body required to satisfy that deadline will automatically have additional time in which to comply with the deadline. The new deadline is 30 days after the declaration terminates plus the number of days between the beginning of the emergency declaration and the arrival of the erstwhile deadline. For example, if a deadline is reached 20 days after the declaration of an emergency, the new deadline would be 50 days from the termination of the emergency (measured as 30 days after the declaration terminates plus the 20 days between the onset of the declaration and the arrival of the erstwhile deadline).

The suspension does not apply to any deadline imposed outside of state law. Thus, for example, the requirement in the Wisconsin Constitution that the Governor has six days (excluding Sundays) to either sign or return a bill presented by the Legislature would not be altered by the bill draft. Also, any requirement imposed by federal law would not be altered.

Transfer of Executive Branch Personnel

In a nonstatutory provision, the **bill draft** authorizes the Secretary of DOA to transfer an employee from one executive branch office, commission, board, department, or independent agency ("agency") to another. The transferred employee will provide services to the receiving agency.

Under the bill draft, the receiving agency pays all salary and fringe benefit costs of the transferred employee. The bill draft does not provide additional funds for this purposes, so presumably the salary and costs will be allocated from the receiving agency's existing budgetary resources. In addition, the bill draft does not authorize the Secretary of DOA or the receiving agency to modify an employee's salary, benefits, or other employment status.

The authority of the Secretary to execute a transfer applies during the period covered by the public health emergency declared by Executive Order #72, plus any extensions. After that expiration of the current emergency declaration, no new transfers may occur under this provision of the bill draft.

Any transfer under this provision of the bill draft, however, remains in effect until rescinded by the Secretary. This suggests that a transfer would remain in effect even beyond the duration of the emergency declaration, if it is not rescinded by the Secretary.

Waiving Personal Appearance Requirements

Under **current law**, certain individuals must appear in-person before governmental bodies in order to conduct business or satisfy legal requirements. Examples of personal appearance requirements exist in diverse areas, including probate proceedings, where an individual must appear before a court; certain driver licensing actions, where an individual must appear before the Department of Transportation; and appeals of administrative discipline of a veterinarian, where an individual must appear before the Veterinary Examining Board.¹⁰

Under the **bill draft**, the head of a governmental body may waive the requirement for an in-person appearance during a declared public health emergency if that head finds that the waiver assists in the state's response to the public health emergency or that enforcing the requirement may increase the public health risk. The bill draft provides this authority to any state agency, institution of higher education, association, society, or other body in state government that is entitled to expend appropriated funds, including the Legislature, the courts, and any authority.

Although the waiver authority in the bill draft is very broad with regard to state governmental bodies, it does not appear to apply to nongovernment bodies. For example, with limited exception, current law requires a person to appear in-person before a notary public for certain notarial acts, such as witnessing or attesting a signature, certifying or attesting a copy, or noting a protest of a negotiable instrument. If a notary public is a private individual, the bill draft does not permit that individual to waive a personal appearance requirement.

Economic Development

Under **current law**, the Wisconsin Economic Development Corporation (WEDC) board develops and implements economic programs to provide business support and expertise, and financial assistance to companies that are investing and creating jobs in Wisconsin. The WEDC board is also directed to support new business start-ups and business expansion and growth in the state and has various statutory responsibilities and powers related to the administration of its tax credit, loan, and grant programs.¹¹

Funding for WEDC is provided through GPR and segregated revenue.¹² The **bill draft** increases the GPR appropriation to WEDC by \$25 million in fiscal year 2019-2020.

Shared Revenue

Public Health Emergency Supplement

The **bill draft** creates a sum-sufficient appropriation to provide a one percent increase in the 2020 distribution of county and municipal aid. Under the bill draft, DOA must make the

¹⁰ In other circumstances, current law may allow a personal appearance requirement to be waived. For example, in lieu of requiring a property owner to appear in person to object to a property tax assessment, a board of review may allow the property owner to appear by telephone or to submit a written statement. [s. 70.47 (8), Stats.]

¹¹ Section 238.03 (1), Stats., also provides WEDC discretion to develop and implement any other programs related to economic development in Wisconsin.

¹² Segregated revenue appropriated to WEDC consists primarily of dollars collected from the economic development surcharge imposed on certain corporations and insurers (i.e., the economic development fund). Additional segregated revenue is provided from the environmental fund for the purpose of awarding brownfield assessment grants to local governmental units.

supplemental payments to counties and municipalities by May 1, 2020, or at a later date in 2020 as determined by the Department of Revenue Secretary.

Public Health Emergency Local Assistance Program

The **bill draft** appropriates \$20 million in fiscal year 2019-20 GPR for public health emergency local assistance. DOA must establish and administer the program and may make payments from this continuing appropriation upon application by the following units of local government: counties, cities, villages, towns, and federally recognized American Indian tribes or bands.

Under the program, the assistance is intended to reimburse extraordinary operational costs related to protecting and improving public health during the public health emergency declared in Executive Order #72, plus any extensions. The assistance may not be used for capital acquisition costs unless those costs are incurred directly in response to expanding medical treatment capacity for the emergency.

DOA must establish an initial period during which applications may be received. After that period closes, DOA may approve, deny, or disallow any application, in whole or in part. If insufficient funds are available to pay all approved applications, DOA must prorate each award. If funds remain available after the initial period, DOA must establish additional periods until all funds are expended.

State Government

Printing Services

Current law authorizes DOA to produce, or contract for the production of, various printed products, including legislative printing and printed materials offered by state agencies. DOA is required to charge the cost of printing to the state agency ordering the work.

The **bill draft** further authorizes DOA to provide printing services to counties, towns, villages, and cities. The bill draft also provides that money received by DOA for rendering these printing services must be used for such services.

Funding for DOA Public Health Emergency Expenditures

The **bill draft** provides a sum-sufficient appropriation to DOA for costs related to a declared public health emergency. The bill draft generally limits this appropriation to \$200 million in any fiscal biennium, though DOA may submit a request to JCF to expend funds in excess of this limit. Such a request is considered approved if JCF approves the request, modifies and approves the request, or if no member of JCF objects to the request within 24 hours of its receipt. If a JCF member objects to the request, JCF must approve, reject, or modify the request within 48 hours of receiving the request. If no such action is taken, the request is considered approved. The bill draft provides that no public hearing is required for JCF to respond to DOA's request and that JCF may vote on a request by mail ballot or polling.

The bill draft authorizes DOA to expend funds from the appropriation, described above, for the following:

- Facilitating coordination between and among federal, state, local, and tribal agencies, social services agencies, and public and private health care entities that the DOA Secretary determines may be affected by a public health emergency.
- Awarding grants and entering into contracts pertaining to a public health emergency.

- Supporting emergency operations related to a public health emergency, including investigation, education, and eradication.
- Information technology directly related to a public health emergency.
- Facilities expenditures directly related to a public health emergency.
- Personnel costs, including salary, overtime, and benefits, for any state agency (as defined in the bill draft), if those costs are directly related to a public health emergency.
- Purchasing that is directly related to a public health emergency.
- Expenditures associated with continuity of state government, if those expenditures are directly related to a public health emergency.
- Carrying out other activities as the DOA Secretary deems applicable and appropriate.

If DOA expends funds pursuant to the any of the activities set forth above, the bill draft requires DOA to submit a report to JCF on those expenditures. The first report is due no later than 75 days after DOA first expends funds and subsequent reports are due at the end of each month in which DOA expends funds.

Debt Refinancing

The **bill draft** 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 by \$750 million, from \$6.785 billion to \$7.510 billion. The bill draft retains the current law requirement that bonds could be issued under this authority only if the true interest cost to the state is reduced.

Recent biennial budget acts have made similar or larger increases in this bonding authorization. For instance, 2013 Wisconsin Act 20 increased the authorization by \$2.01 billion, and 2015 Wisconsin Act 55 and 2017 Wisconsin Act 59 each increased the authorization by \$1.5 billion.

This information memorandum was prepared by the Legislative Council staff on March 31, 2020.