Legislative Fiscal Bureau
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March 9, 2011

TO: Senator Scott Fitzgerald
Representative Jeff Fitzgerald
State Capitol

FROM: Bob Lang, Director

SUBJECT: Modification to SS SB 11/AB 11

At your request, this document has been prepared to reflect your proposal to modify SS SB 11/ AB 11.

On January 31, 2011, this office released general fund tax collection and expenditure estimates for 2010-11 as well as tax collection estimates for the 2011-13 biennium. That report projected a net, general fund closing balance of $56.4 million for the 2010-11 fiscal year.

The net, general fund balance under your proposal is estimated to be $93.9 million.

Following this introduction is a table of contents, 2010-11 general fund condition statement, and a list of the general fund fiscal effects for 2010-11. The document then summarizes each of the items of your proposal and provides fiscal effects, if any, for 2010-11 and 2011-13.

BL/sas

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Collective Bargaining and Employment Relations Provisions

Shared Revenue and Tax Relief

ESTIMATED GENERAL FUND CONDITION STATEMENT

	2010-11
Revenues	
Opening Balance, July 1	$25,718,100
Taxes	12,691,400,000
Departmental Revenues	
Tribal Gaming	22,330,300
Other	861,624,700
Total Available	$13,601,073,100
Appropriations	
Gross Appropriations	$14,101,593,400
Compensation Reserves	95,962,700
Biennial Appropriation Adjustment	-242,677,200
Sum Sufficient Reestimates	-121,637,800
Less Lapses	-391,021,200
Net Appropriations	$13,442,219,900
Balances	
Gross Balance	$158,853,200
Less Required Statutory Balance	-65,000,000
Net Balance, June 30	$93,853,200

2010-11 GENERAL FUND FISCAL EFFECTS

	2010-11
REVENUES	
Departmental Revenues (GPR-Earned)	
Increases in Employee Health and Retirement Contributions	$27,891,400
APPROPRIATIONS	
Family Care Aging and Disability Resource Centers	-$3,100,000
Joint Finance Supplemental Appropriation	-4,590,400
Total	-$7,690,400
LAPSES OR TRANSFERS	
Increases in Employee Health and Retirement Contributions -- Legislature, Courts, Governor	$1,908,600
Effect on General Fund Balance	$37,490,400

SUMMARY OF PROVISIONS

CHILDREN AND FAMILIES

1. COLLECTIVE BARGAINING FOR DAY CARE PROVIDERS

Eliminate the authority for a single collective bargaining unit for a certified or licensed day care provider who provides care and supervision for not more than eight children who are not related to the day care provider. For child care providers who are covered by a collective bargaining agreement, this provision would first apply on the date on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.

In addition, eliminate the authority for DCF to enter into a memorandum of understanding with the certified representative of county employees performing services for the child care provider services unit in Milwaukee County to modify hours and conditions of employment. Eliminate the authority for DCF to unilaterally resolve disputes as to hours or conditions of employment for these Milwaukee County employees if good faith efforts to resolve disputes fail.

Provisions of 2009 Act 28 authorized, under Subchapter I (Employment Peace) to Chapter 111 (Employment Relations), a single collective bargaining unit for a certified or licensed day care provider who provides care and supervision for not more than eight children who are not related to the day care provider. A certified or licensed day care provider who provides care and supervision for not more than eight children who are not related to the day care provider was included in the definition of employee under Subchapter I. With respect to such day care providers, employer was defined as the state, counties, and other administrative entities involved in regulation and subsidization of the day care providers. The definitions in Subchapter I of "fair-share agreement," "maintenance of membership agreement," and "referendum" were modified to reflect the inclusion of such day care providers and the labor organization representing them. The bill would eliminate these provisions.

Provisions of Act 28 also provided for the state takeover of the administration of Wisconsin Shares, the state's child care subsidy program, from Milwaukee County. As part of the state takeover, Act 28 detailed the treatment of employees of the new child care provider services unit in Milwaukee County established to administer Wisconsin Shares. Act 28 specified that DCF was permitted to enter into a memorandum of understanding with the certified representative of Milwaukee County employees performing services for the unit and to unilaterally resolve a dispute as to hours or conditions of employment that remained between DCF and the certified representative if good faith efforts to resolve the dispute failed. The bill would eliminate the authority for DCF to enter into this memorandum of understanding or to unilaterally resolve disputes with Milwaukee County employees regarding hours and conditions of employment.

GENERAL FUND TAXES

1. TECHNICAL CORRECTION TO TAX DEDUCTION FOR NEW HIRES

2011 Act 3 created an income and franchise tax deduction and credit for businesses that relocate to Wisconsin from outside the state, and 2011 Act 5 created an income and franchise tax deduction based on the increased number of full-time equivalent (FTE) employees hired by a business in Wisconsin. Act 5 includes a provision under the individual income tax specifying that a claimant of the deduction for new FTE hires may not also claim the credit for relocating to Wisconsin. However, the word "credit" should have been "deduction." This item makes a technical correction to the Act 5 provisions to use the proper wording.

UNIVERSITY OF WISCONSIN HOSPITAL AND CLINICS AUTHORITY

1. REPEAL COLLECTIVE BARGAINING RIGHTS FOR UNIVERSITY OF WISCONSIN HOSPITALS AND CLINICS AUTHORITY EMPLOYEES

Eliminate collective bargaining rights for employees of the University of Wisconsin Hospitals and Clinics Authority. Under current law, three collective bargaining units are established for the representation of employees of the Authority: (1) fiscal and staff services; (2) patient care; and (3) science. The treatment of these provisions would first apply to employees who are covered by a collective bargaining agreement that contains provisions inconsistent with these provisions on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever comes first.

UNIVERSITY OF WISCONSIN HOSPITAL AND CLINICS BOARD

1. ELIMINATE UNIVERSITY OF WISCONSIN HOSPITAL AND CLINICS BOARD

	2010-11	2011-13
PR	-$76,872,500	-$307,479,000
Positions	-2,609.38	-2,609.38

Delete statutory language establishing the University of Wisconsin Hospital and Clinics

Board (UWHCB) and the requirement that the University of Wisconsin Hospitals and Clinics Authority contract with UWHCB for certain services. Eliminate an existing program revenue (PR) appropriation for the UWHCB with annual base level funding of $153,739,500 and 2,609.38 positions. Eliminate the two nonvoting members of the Authority's Board of Directors who are appointed by the Governor and who must be an employee or a representative of one of the collective bargaining units representing the employees of the Authority or the Board. Delete provisions related to carry-over employees who were members of collective bargaining units during 1996-97 when the Authority was created.

Terminate the existing contract between the Board and the Authority on the effective date of the bill and transfer all employees of UWHCB to the Authority. Require the Authority to adhere to the terms of any collective bargaining agreement covering the UWHCB employees that is in effect on the bill's effective date, until that agreement terminates, including specifically terms relating to employer payment of any employee required contributions under the Wisconsin Retirement System and employer payment of any health insurance premiums on behalf of employees. Provide that upon termination of the collective bargaining agreement, the Authority would establish the compensation and benefits of the Board's employees as under current law for other Authority employees.

UWHCB and the Authority were created by 1995 Act 27. The Authority operates and manages the University of Wisconsin Hospitals and Clinics and UWHCB employs the non-professional represented employees that provide services to the Authority. Current law requires the Authority to contract with UWHCB for the provision of certain services and prohibits the Authority from contracting with any other entity for the provision of such services. UWHCB is a state agency and its employees are state employees who are represented in the following collective bargaining units: (a) clerical and related; (b) blue collar and nonbuilding trades; (c) building trades crafts; (d) security and public safety; and (e) technical. UWHCB employees are paid through a PR appropriation with revenues received from the Authority; UWHCB does not receive any state GPR funding.

The Authority is not a state agency and employees of the Authority are not state employees. Current law establishes three collective bargaining units for representation of employees of the Authority: (1) fiscal and staff services; (2) patient care; and (3) science. Collective bargaining units for the representation of employees of the Authority who are not engaged in one of the three activities must be approved by the Employment Relations Commission.

HEALTH SERVICES

1. MEDICAL ASSISTANCE -- STUDY AND IMPLEMENTATION OF PROGRAM CHANGES

Require the Department of Health Services (DHS) to study potential changes to the medical assistance (MA) program, and authorize DHS to promulgate rules to implement program changes, as described below.

Study. Direct DHS to study potential changes to the MA state plan and to waivers of federal law relating to MA obtained from the U.S. Department of Health and Human Services (DHHS) for all of the following purposes: (a) increasing the cost effectiveness and efficiency of care and the care delivery system for MA programs; (b) limiting switching from private health insurance to MA programs; (c) ensuring the long-term viability and sustainability of MA programs; (d) advancing the accuracy and reliability of eligible MA programs and claims determinations and payments; (e) improving the health status of individuals who receive benefits under the MA program; (f) aligning MA program benefit recipient and service provider incentives with health care outcomes; and (g) supporting responsibility and choice of MA recipients.

Rules. Provide that if DHS determines, as a result of the study described above, that revision of existing statutes or rules would be necessary to advance a purpose described above, DHS could promulgate rules that do any of the following related to the MA programs: (a) require cost-sharing from recipients up the maximum allowed by federal law or a waiver of federal law; (b) authorize providers to deny care or services if a program benefit recipient is unable to share costs, to the extent allowed by federal law or waiver; (c) modify existing benefits or establish various benefit packages for different groups of recipients; (d) revise provider reimbursement models for particular services; (e) mandate that program benefit recipients enroll in managed care; (f) restrict or eliminate presumptive eligibility; (g) to the extent permitted by federal law, impose restrictions on providing benefits to individuals who are not citizens of the United States; (h) set standards for establishing and verifying eligibility requirements; (i) develop standards and methodologies to assure accurate eligibility determinations and redetermine continuing eligibility; and (j) reduce income levels for purposes of determining eligibility to the extent allowed by federal law or waiver, subject to other provisions in the bill regarding waiver requests and a potential reduction in the eligibility standard for non-pregnant, non-disabled adults.

Submission of State Plan Amendments and Waiver Requests. Require DHS to submit an amendment to the state MA plan or request a waiver of federal MA law, if necessary, to the extent necessary to implement any rule promulgated under these provisions. Provide that if DHHS does not allow the amendment or does not grant the waiver, DHS could not put the rule into effect or implement the action described in the rule.

Waiver of PPACA Eligibility MOE Requirement and Potential Reduction in Financial Eligibility Standard for Non-Disabled, Non-Pregnant Adults. Require DHS to request a waiver from the U.S. Department of Health and Human Services (DHHS) Secretary to permit DHS to have in effect eligibility standards, methodologies, and procedures under the state MA plan or waivers of federal laws relating to MA that are more restrictive than those in place on March 23, 2010. Specify that if the waiver request does not receive federal approval before December 31, 2011, DHS would be required to reduce income eligibility standards on July 1, 2012, for non-disabled, non-pregnant adults to 133% of the federal poverty level (FPL), to the extent permitted under provisions enacted as part of the federal Patient Protection and Affordable Care Act (PPACA).

PPACA includes a general requirement that prevents states from having in effect eligibility standards, methodologies, or procedures under their state MA programs that are more restrictive than the eligibility standards, methodologies, or procedures that were in effect on the date PPACA was enacted (March 23, 2010). This maintenance of effort (MOE) requirement took effect on March 23, 2010, and continues until the date on which the DHHS Secretary determines that the state has a fully operational health benefit exchange (which is assumed to be January 1, 2014). The federal MOE requirement, as it relates to children under the age of 19, continues until October 1, 2019.

However, during the period beginning January 1, 2011, through December 31, 2013, PPACA contains an exception to the general MOE requirement for non-pregnant, non-disabled adults with incomes greater than 133% of the FPL if the state certifies to the DHHS Secretary that it has a budget deficit during the fiscal year in which the certification is made, or that it is projected to have a budget deficit in the succeeding state fiscal year.

As of December, 2010, it is estimated that there were approximately 63,200 non-disabled, non-pregnant adults in families with income greater than 133% of the FPL enrolled in BadgerCare Plus, excluding approximately 6,800 adults without dependent children who were enrolled in the Core plan. All of these individuals are in families with income less than 200% of the FPL, which is the maximum family income individuals in these groups may have to be eligible for these programs.

Scope of Rules. For the purposes of these provisions, define an MA program to include any program operated under Subchapter IV of Chapter 49 ("Medical Assistance"), demonstration program operated under 42 USC 1315 ("MA Demonstration Projects"), and a program operated under a waiver of federal law relating to MA that is granted by DHHS.

Based on this definition of a "medical assistance" program, it appears that the rules under these provisions could potentially affect a broad range of MA-related programs, including (but not limited to) the following: (a) BadgerCare Plus and its subprograms, including the BadgerCare Plus Core Plan for childless adults and the family planning waiver program; (b) Medicaid for elderly, blind and disabled populations (EBD Medicaid) and its subprograms, including SSI-related Medicaid, the MA purchase plan, institutional and community-based long-term care programs (including Family Care, the community options waiver programs, and the

community integration program), the Katie Beckett program, the Medicare premium assistance programs for individuals who are eligible for both MA and Medicare ("dual eligibles"), and Wisconsin Well-Woman Medicaid; and (c) SeniorCare.

However, the Legislative Reference Bureau indicates that any such rules could not conflict with current statutory provisions relating to these programs, except those provisions that are referenced in the bill as not applicable if DHS promulgates rules that would conflict with these sections. These sections are listed below.

Statutory Provisions Referenced in the Bill that Potentially Could be Superseded by Conflicting Rules

Statute	Subject
49.45 (3)	MA payments generally, including (but not limited to) the following: Payments to counties for administrative (income maintenance) services Payments to aging and disability resource centers for conducting functional screens Payments to contracted entities that provide prepaid health care Payments to hospitals, including payments partially funded from hospital assessments Payments for specialized medical vehicle transportation services
49.45 (6m)	Payment to nursing homes, intermediate care facilities for the mentally retarded, and community-based residential facilities, including the state Centers for the Developmentally Disabled and the Wisconsin Veterans Homes
49.45 (8)(b)&(c)	Payment for home health services provided by certified home health agencies and independent nurses
49.45(8r)	Payment for obstetric and gynecological care in primary care shortage areas
49.45(8)(v)	Payments to pharmacies that perform services that result in savings to the MA program
49.45(18)(ac)	Recipient cost sharing (copayments, coinsurance and deductibles)
49.45(18)(ag)	Copayments for generic and brand-name drugs
49.45(18)(b)	Services and individuals who are exempt from cost-sharing requirements, including: Services provided to individuals in skilled nursing homes and certified intermediate care facilities Services provided to persons under 18 years of age in families with income less than 100% of the federal poverty level Services provided to pregnant women Emergency services Family planning services Transportation by common carrier or private motor vehicle, if authorized in advance by a county Home health services or, if a home health agency is unavailable, nursing services Personal care services Case management services
49.45(18)(d)	A $12 per month limit on cost-sharing for prescription drugs used by recipients who designate a pharmacy as a sole provider
49.45(23)(a)	Requirement that DHS request a federal waiver to permit DHS to conduct a demonstration project

Statute	Subject
	to provide health care coverage for adults under the age of 65 with family incomes up to 200% of the federal poverty level, and who are not otherwise eligible for MA coverage (the BadgerCare Plus waiver)
49.45(23)(b)	DHS authority to promulgate rules relating to the MA coverage of childless adults under the core plan, including eligibility requirements and cost-sharing requirements (including the annual $75 enrollment fee)
49.45(24g)(c)	Payments to physicians under the physician payment pilot program created in 2009 Wisconsin Act 28, which authorized increases in payments to qualifying physicians
49.45(24)(a)&(b)	DHS authority to implement a demonstration project to provide family planning services to women and men between the ages of 15 and 44 whose family income does not exceed 200% of the federal poverty level.
49.45(25g)(c)	Payments to certain qualifying providers that also receive DHS grants for HIV/AIDS-related services
49.45(27)	Prohibition on MA eligibility for non-citizens and aliens lawfully admitted for permanent resident or otherwise permanently residing in the United States under color of law, except as provided under federal law.
49.45(39)(b)1	Payment for school medical services
49.46(1)(n)	MA eligibility -- list of groups eligible for MA
49.46(2)(a)&(b)	MA benefits -- list of services and benefits available to MA recipients
49.465(2)	Presumptive eligibility for pregnant women
49.47(4)(a)	MA eligibility for medically indigent populations
49.47 (6)(a)	MA payments for services provided to individuals eligible for both MA and Medicare (dual eligibles)
49.471 (4) through (8)	BadgerCare Plus -- general eligibility criteria, presumptive eligibility, miscellaneous eligibility and benefit provisions, special (9) and (10) income provisions, provisions relating to health insurance coverage and eligibility, cost-sharing, and benchmark plan benefits and copayments
49.472 (3)&(4)(b)	MA purchase plan -- eligibility and premiums
49.473 (2) & (5)	MA eligibility for women diagnosed with breast or cervical cancer or precancerous conditions, and payments for services

Statutes pertaining to several "medical assistance" programs are not included in the above list. For example, s. 49.688 of the statutes defines the financial eligibility requirements and the cost-sharing requirements for SeniorCare. Similarly, s. 46.286 of the statutes identifies functional and financial eligibility requirements for Family Care, and specifies who is entitled to the Family Care benefit. On its face, the language of the bill may extend to these statutory sections. Under the LRB's interpretation of the bill, however, DHS could not promulgate rules that conflict with these statutory provisions.

MA Eligibility Determinations and Reevaluations of Continuing Eligibility. Authorize DHS to make additional investigations of eligibility at any time determined by the Department under the rules described under this item, to determine eligibility or to reevaluate continuing eligibility. However, specify that if federal law allows a reevaluation of eligibility more

frequently than every 12 months and if there is no conflicting provision of state law, DHS would not be required to promulgate a rule to reevaluate eligibility under this provision.

Under current law, DHS may make additional investigations of eligibility under the following circumstances: (a) when there is reasonable ground for belief that an applicant may not be eligible or that the recipient may have received benefits to which the recipient may not be entitled; or (b) upon the request of the DHHS Secretary.

Sunset on January 1, 2015. Specify that all of these provisions would sunset on January 1, 2015. Consequently, any rules promulgated by DHS, any amendment to the MA state plan, and any waiver agreements DHS enters into as a result of these provisions would terminate on January 1, 2015, if they are inconsistent with the MA statutes that are in effect as of that date. Further, if MA eligibility for non-disabled, non-pregnant adults is reduced to individuals with family income no greater than 133% of the federal poverty level as of July 1, 2012, as provided under the bill, this group would again become eligible for MA as of January 1, 2015, unless the statutes are modified to reflect this reduction in the eligibility standard for this group.

2. AGING AND DISABILITY RESOURCE CENTERS

	2010-11
GPR	-$3,100,000
FED	-1,205,600

Reduce funding budgeted for Family Care aging and disability resource centers (ADRCs) by $3,100,000 GPR in 2010-11 to reflect estimates of cost savings that DHS will realize because several ADRCs began operations in the 2009-11 biennium later than the dates assumed in Act 28. Currently, approximately 28% of the total funding budgeted for ADRCs is supported with federal MA administration funds. Consequently, the GPR funding reduction in the bill would reduce estimated federal funds by approximately $1,205,600 in 2010-11, compared to the amount budgeted in Act 28.

ADRCs provide information, assessments, functional eligibility determinations, prevention, wellness, and other services relating to long-term care. The funding that was provided in 2009 Act 28 was based on the administration's assumption that ADRCs would begin operating in seven counties during the 2009-11 biennium -- Dane, Langlade, Lincoln, Rock, Walworth, Winnebago, and Milwaukee Counties. ADRCs in four of these counties started operating later than was assumed in Act 28, and two counties, Dane and Rock, will not begin operating ADRCs in the 2009-11 biennium.

3. WISCONSIN QUALITY HOME CARE AUTHORITY

Repeal all statutory provisions relating to the Wisconsin Quality Home Care Authority (WQHCA), including provisions that establish a process under which certain independent, qualified home care providers can establish a single statewide collective bargaining unit for the

purpose of bargaining collectively with the state with respect to wages and fringe benefits.

In 2010-11, DHS is budgeted $275,000 GPR and $225,000 FED to support WQHCA. The bill would not reduce funding in the current fiscal year for WQHCA. However, if this provision were enacted, base funding for WQHCA could be reduced as part of the 2011-13 biennial budget.

Description of WQHCA. 2009 Act 28 created the WQHCA as a means for improving the supply and quality of independent home care workers. Individuals who receive services under Family Care, Family Care Partnership, the Program for All-inclusive Care for the Elderly (PACE), Include, Respect, I Self-Direct (IRIS), and some county-administered long-term care programs have the option to self-direct some of the long-term care services they receive, including home care services. Individuals who choose to self-direct their care are responsible for finding and hiring their home care providers.

To facilitate the hiring process, WQHCA is required to maintain a registry of independent home care providers and provide referrals to individuals in need of home care services. The registry includes contact information for the provider and information regarding the provider's experience and qualifications. All registered providers must pass a background check. WQHCA is also required to develop recruitment, retention, and skills training programs for home care providers, as well as a backup provider system with a 24-hour call service.

Representation for Independent Home Care Providers. Act 28 created provisions that required DHS to provide a labor organization with the list of independent home care providers maintained by the WQHCA, if the organization met certain specified criteria. The Employment Relations Commission was directed to hold an election in which independent home care providers could vote on whether they wished to be represented. If the majority of home care providers vote for a single labor organization, the labor organization would be the exclusive representative for all home care providers in that collective bargaining unit.

In May, 2010, these independent home care workers voted to make the Service Employees International Union (SEIU) Healthcare Wisconsin their exclusive representative. DHS, representing the state, reached an agreement with SEIU in December, 2010, under which DHS agreed to ensure that home care payers pay providers at least $9 per hour, effective July 1, 2012. Bills to ratify the agreement negotiated between the state and SEIU Healthcare Wisconsin (2009 Assembly Bill 995 and SB 725) failed to pass the Legislature.

Transfer of Assets and Contracts. Transfer all assets, liabilities, personal property (including records), and contracts of the WQHCA to DHS on the effective date of the bill. Specify that all contracts entered into by the WQHCA in effect on the effective date of the bill would remain in effect and be transferred to DHS. Direct DHS to carry out any obligations under such a contract until the contract is modified or rescinded by DHS to the extent allowed under the contract.

4. INCOME AUGMENTATION FUNDING LAPSE

Require DHS to lapse $4,500,000 FED and the Department of Children and Families (DCF) to lapse $2,011,200 PR to the general fund in 2010-11, but require the Secretary of the Department of Administration (DOA) to apply these lapses to the $200 million lapse requirement for the 2009-11 biennium included in 2007 Act 20. As a result, this provision would not increase anticipated lapses to the general fund in 2010-11. However, it would specify in statute two appropriations from which specific lapse amounts would occur. In addition, it would authorize the lapse of federal revenues to the general fund, which is prohibited under the Act 20 provision.

The source of revenue for these lapses is federal medical assistance matching funds the state claims for targeted case management (TCM) services counties provide to children in out-of-home care whose costs are not reimbursable under Title IV-E of the Social Security Act. TCM funds are a component of income augmentation revenue the state generates by contracting with an agency to conduct activities to maximize federal reimbursement. The state may use these federal funds for any purpose. Under current law, DHS and DCF must submit a plan for the use of these funds to the DOA Secretary by September 1 of the fiscal year after the fiscal year in which the moneys were received. If the DOA Secretary approves the plan, it is then subject to approval by the Joint Committee on Finance under a 14-day passive review.

The bill would require DCF and DHS to lapse a total of $6,511,200 of these funds in state fiscal year 2010-11, rather than wait for the September 1, 2011, plan to allocate these funds. Any remaining income augmentation revenue the state collects in 2010-11 would be allocated under the September, 2011, plan, the 2011-13 biennial budget, or other legislation that specifically allocates these funds.

LEGISLATURE

1. JOINT COMMITTEE ON FINANCE SUPPLEMENTAL APPROPRIATION

	2010-11
GPR	- $4,590,400

Reduce funding by $4,590,400 GPR in 2010-11 in the Joint Committee on Finance's general program revenue supplementation appropriation. Under 2009 Act 100, $8.8 million was placed in the Joint Committee on Finance's supplemental appropriation for potential release to various state agencies and the courts for costs associated with operating while intoxicated legislation. On March 16, 2010, $4,209,600 GPR was released to the Departments of Corrections and Justice, the District Attorneys, the State Public Defender, and the circuit courts. The reduction under the bill would eliminate the remaining reserve for 2009 Act 100.

STATE CIVIL SERVICE SYSTEM

1. REPLACEMENT OF CLASSIFIED POSITIONS WITH UNCLASSIFIED POSITIONS

	2010-11	2011-13
All Funds	1.0	1.0

Maximum Division Administration Allocation. Increase the number of current statutorily-authorized division administrators that may be appointed from the unclassified service, for the agencies listed below, by 37 and redefine "administrators" to include other managerial positions determined by an appointing authority.

Agency	Current	Proposed	Modification
Administration*	12	13	1
Agriculture, Trade and Consumer Protection	6	9	3
Children and families	5	8	3
Corrections	4	7	3
Financial Institutions	3	5	2
Health Services	6	9	3
Justice	3	5	2
Natural Resources	7	10	3
Office of the Commissioner of Insurance	0	2	2
Office of State Employment Relations*	2	3	1
Public Service Commission	5	8	3
Regulation and Licensing	4	6	2
Revenue	4	7	3
Tourism	0	1	1
Transportation	6	9	3
Workforce Development	6	8	2
Total	73	110	37

* Under current law, OSER is administratively attached to DOA, and its division administrator allotment is included under DOA.

Under current law, two unclassified positions for the Office of State Employment Relations (OSER) are included under the Department of Administration's (DOA's) division administrator maximum. The bill would increase the maximum for OSER to three administrators. Further, of DOA's 12 allowable division administrator positions, the Department currently only utilizes 10.

Under the bill, the two unutilized division administrator allocations are eliminated and three new unclassified positions are created, resulting in a net increase of one division administrator.

In addition, create 1.0 PR additional unclassified position within the DOA. The State Budget Office indicates that this position would act as a division administrator for facilities management, allowing the agency to split the current Division of State Facilities into two divisions: (a) Buildings and Police Services, which would include space rental, state power plant operations, and state building operations maintenance; and (b) Facilities Development, which would include architectural and engineering services and other duties related to capital improvements and Building Commission activities. The provision does not identify any new funding for salary, fringe benefits or supplies and services for this new position, and the State Budget Office indicates that existing funding would be used in 2010-11. [It should be noted that once salary and fringe benefits are assigned to the new position, that amount would be included under standard budget adjustments for future years. The average salary and fringe benefits of current DOA division administrators is $143,100 annually.]

Finally, allow the Director of OSER to appoint either a deputy director or an executive assistant from outside the classified service. Under current law, the Director of OSER may appoint an executive assistant outside of the classified service (unclassified). The pay scales for executive assistants are set at two ranges below that of the agency head, while the pay scale of deputies are one below that of the agency head. The current pay scale for an executive assistant at OSER is between $107,300 and $166,400 annually for salary and fringe benefits. The pay scale for a deputy at OSER would be between $115,900 and $179,800 annually for salary and fringe benefits.

Classified to Unclassified Position Replacement. Specify the Secretary of the Department of Administration would identify 38.0 (all funds) classified positions for deletion within specified appropriations and create 39.0 unclassified division administrator positions within specified appropriations, as identified below:

Fund	Appropriation	Agency	Classified Deletions	Unclassified Additions	Change
GPR	Program Operations	Agriculture, Trade and Consumer Protection	-3.00	3.00	0.00
GPR	Program Operations	Children and Families	-1.85	1.85	0.00
GPR	Program Operations	Corrections	-3.00	3.00	0.00
GPR	Program Operations	Health Services	-2.00	2.00	0.00
GPR	Program Operations - Legal Services	Justice	-1.00	1.00	0.00
GPR	Program Operations - Administrative Services	Justice	-1.00	1.00	0.00
GPR	Program Operations	Revenue	-2.55	2.55	0.00
GPR	Program Operations	Tourism	-1.00	1.00	0.00
	GPR Total		-15.40	15.40	0.00
FED	Indirect Cost Reimbursements	Administration	-1.00	0.00	-1.00
FED	Federal Projects	Children and Families	-0.15	0.15	0.00
FED	Indirect Cost Reimbursements	Health Services	-1.00	1.00	0.00
	FED Total		-2.15	1.15	-1.00
PR	Materials and Services to State Agencies	Administration	0.00	1.00	1.00
PR	Facility Operations and Maintenance	Administration	0.00	1.00	1.00
PR	Legal Services	Administration	-1.00	1.00	0.00
PR	Administrative and Support Services	Children and Families	-1.00	1.00	0.00
PR	Program Operations	Financial Institutions	-2.00	2.00	0.00
PR	Program Operations	Office of the Commissioner of Insurance	-2.00	2.00	0.00
PR	Program Operations	Office of State Employment Relations	-1.00	1.00	0.00
PR	Program Operations	Public Service Commission	-3.00	3.00	0.00
PR	Program Operations	Regulation and Licensing	-2.00	2.00	0.00
PR	Administrative Services	Workforce Development	-2.00	2.00	0.00
	PR Total		-14.00	16.00	2.00
SEG	Program Operations - Land	Natural Resources	-1.00	1.00	0.00
SEG	Program Operations - Administrative and Technology	Natural Resources	-2.00	2.00	0.00
SEG	Program Operations	Revenue	-0.45	0.45	0.00
SEG	Management and Operations	Transportation	-3.00	3.00	0.00
	SEG Total		-6.45	6.45	0.00
	All Funds Total		-38.00	39.00	1.00

The State Budget Office indicates that personnel from three separate employment areas would be moved from classified to unclassified service under the agencies identified, including: (a) 14.0 (all funds) attorney services positions; (b) 15.0 (all funds) communications positions; and (c) 9.0 (all funds) legislative liaison positions. The revised unclassified positions would be renamed as chief legal advisors, communications directors, and legislative advisors. Individuals in these unclassified positions would be at will employees appointed by the heads of the respective agencies. The State Budget Office does not anticipate any salary and fringe benefits changes related to this reclassification. However, to the extent that the new unclassified positions are hired at a higher, or lower, salary level than the deleted classified positions, there would be a fiscal effect.

2. TRANSFER OF CAREER EXECUTIVE EMPLOYEES

Provide that an appointing authority may reassign an employee in a career executive position to a career executive position in any agency if the appointing authority in the agency to which the employee is to be reassigned approves of the reassignment.

Under current law, the Director of the Office of State Employment Relations (OSER) may promulgate rules to establish a career executive program. The program is intended to provide state agencies with highly qualified executive candidates, provide outstanding administrative employees a broad opportunity for career advancement, and provide 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. The bill would permit an appointing authority to reassign an employee in a career executive position to a 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.

3. DISCHARGE OF STATE EMPLOYEES

Provide that, during a state of emergency declared by the Governor under state emergency management law, an appointing authority may discharge any employee who does any of the following: (a) fails to report to work as scheduled for any three working days during the state of emergency and the employee's absences from work are not approved leaves of absence; or (b) participates in a strike, work stoppage, sit-down, stay-in, slowdown, or other concerted activities to interrupt the operations or services of state government, including specifically participation in purported mass resignations or sick calls. Provide that engaging in any of these actions constitutes just cause for discharge. Before discharging an employee, the appointing authority would be required to provide the employee notice of the action and must furnish to the employee in writing the reasons for the action. The appointing authority would also be required to provide the employee an opportunity to respond to the reasons for the discharge.

Under current law, the Governor may issue an executive order declaring a state of emergency for the state or any portion of the state if he or she determines that an emergency resulting from a disaster or the imminent threat of a disaster exists. Generally, a disaster is a severe or prolonged, natural or human-caused, occurrence that threatens or negatively impacts life, health, property, infrastructure, the environment, the security of this state or a portion of this state, or its critical systems. A state of emergency may not exceed 60 days, unless the state of emergency is extended by joint resolution of the Legislature.

WISCONSIN RETIREMENT SYSTEM AND PUBLIC SECTOR HEALTH INSURANCE BENEFITS

1. REQUIRED RETIREMENT CONTRIBUTIONS AND ADDITIONAL RETIREMENT-RELATED LIMITATIONS APPLICABLE TO LOCAL UNITS OF GOVERNMENT

Under current law, employee and employer WRS contributions are deposited in the public employee trust fund for investment. There are three components to the WRS contributions: (a) participant (active employee) normal contributions; (b) employer normal contributions; and (c) benefit adjustment contributions (BAC). The benefit adjustment contributions were instituted under 1983 Wisconsin Act 141 to fund increases in retirement benefits of that act. The contribution rates for these components, expressed as a percentage of earnings, also vary by the participant's employment classification. These classifications are: (a) general employees; (b) elected officials and state executives; (c) protective occupation employees who receive social security coverage; and (d) protective occupation employees without social security, which includes only fire fighters employed by local governments.

The following table shows the WRS contribution rates for 2011 by contribution component and the participant's employment classification.

Wisconsin Retirement System Required Contributions -- 2011

	General Participants	Executives and Elected Officials	Protective Occupation With Social Security	Protective Occupation Without Social Security
Employer Normal Cost	5.1%	9.4%	8.9%	12.2%
Benefit Adjustment Contribution	1.5	0.0	0.0	0.0
Employee Normal Cost	5.0	3.9	5.8	4.8
Total Normal Cost	11.6%	13.3%	14.7%	17.0%

The statutes authorize, but do not require, WRS employers to pay, on behalf of the employee, all or a part of any employee-required contributions. Over time, public employee groups have negotiated, or have been provided, an employer "pickup" of employee-required contributions. Currently, under the state's compensation plan for nonrepresented employees and the pickup provisions under the collective bargaining agreements with represented state employees, the state payment for the employee-required normal retirement contributions equals 5% of earnings. Under these provisions, the employee would be required to pay any required contribution amount above 5%. Therefore, state protective occupation employees, with an employee-required normal contribution rate of 5.8%, must pay the 0.8% of earnings that is not paid by the state.

In addition, as shown in the table, a benefit adjustment contribution is currently applied to general employees only. In 2011, the BAC rate is 1.5% of gross salary. For state employees subject to the BAC, the state will pay up to 1.3% of earnings. Therefore, general employees are required to contribute 0.2% of earnings to the WRS in 2011.

The bill would repeal the current law authority for WRS employers (both the state and local employers), except in certain cases, to pay all or part of the contributions required of participating employees. Prohibit such contributions unless they are required in a collective bargaining agreement with represented local police, local firefighters, state troopers, or state inspectors.

Provide that a WRS general participant, and an executive or elected official participant would be required to make an employee contribution to the WRS in an amount equal to one-half of all actuarially-required contributions, as approved by the Employee Trust Fund (ETF) Board. [Under the current 2011 rates, one-half of the general participant rate would be 5.8% and one-half the executive/elected official rate would be 6.65%.] Require WRS participants who are protective occupation employees (both those who are and are not covered by social security) to contribute the percentage of earnings that would be paid by general participants (5.8% in 2011).

Provide that, notwithstanding the employer and employee required contributions rates established under law for 2011 by the ETF Board, beginning on the first day of the first pay period after March 13, 2011, the employee required contributions, as provided under the bill, would be in effect for the remainder of 2011, and the employer required contributions would be adjusted to reflect the increases in employee required contributions for the remainder of 2011. Provide that, if an employer is unable to modify payroll procedures in sufficient time to collect the increased employee-required contributions before the first day of the first pay period after March 13, 2011, the employer must recover all amounts that employees owe before July 1, 2011.

Repeal the benefit adjustment contribution component of the WRS contribution rate. Repeal the current law authority of the ETF Board, on the advice of the actuary, to modify the components of the contribution rate to reflect overall increases or decreases in the rate over time. [Under current law, ETF and its consulting actuary approve the overall contribution rates for the WRS. Additional statutory provisions specify how increases or decreases in the rates each year are to be allocated to the employer and employee components of the rates. These latter adjustment provisions would be deleted from law under the bill, but ETF would retain its authority to modify overall contribution rates each year.]

Provide that, beginning on the effective date of these provisions, in the retirement system operated by Milwaukee County, except as otherwise provided in a collective bargaining agreement entered into with represented local police and firefighters, employees would be required to pay one-half of all actuarially required contributions for funding benefits under the retirement system. The County would not be allowed to pay, on behalf of an employee, any of the employee's share of the actuarially required contributions. In the retirement system operated by the City of Milwaukee, except as otherwise provided in a collective bargaining agreement entered into with represented local police and firefighters, employees would be required to pay

all employee-required contributions for funding benefits under the retirement system. The City would not be allowed to pay, on behalf of an employee, any of the employee's share of the required contributions.

Provide that a local governmental unit (a political subdivision of the state, a special purpose district, an agency or corporation of a political subdivision or special purpose district, or a combination or subunit of any of the foregoing) may not establish a defined benefit pension plan for its employees unless the plan requires the employees to pay half of all actuarially required contributions for funding benefits under the plan and prohibits the local governmental unit from paying on behalf of an employee any of the employee's share of the actuarially required contributions.

The treatment of these provisions would first apply to employees who are covered by a collective bargaining agreement that contains provisions inconsistent with those sections on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.

2. HEALTH INSURANCE PREMIUM CONTRIBUTIONS FOR STATE EMPLOYEES AND LOCAL EMPLOYEES PARTICIPATING IN GROUP INSURANCE BOARD COVERAGE

Repeal current law requirements related to the amount that the employer (state) must pay for health insurance for its insured employees. Provide instead that, except as otherwise provided in a collective bargaining agreement with represented local police, local firefighters, state troopers, or state inspectors, the employer must pay for its current insured employees, as follows: (a) for eligible employees who are not part-time employees or university teaching and graduate assistants as described below, an amount not more than 88 percent of the average premium cost of plans offered in the tier with the lowest employee premium cost (tier-1 plan), as established annually by the director of the Office of State Employment Relations (OSER); and (b) for insured part-time employees (other than university teaching and graduate assistants) who are appointed to work less than 1,566 hours per year, an amount determined annually by the OSER Director. For university teaching and graduate assistants, provide that annually, the OSER Director must establish the amount that the employer is required to pay for teaching and graduate assistant health care coverage.

Under nonstatutory provisions, modify state employee health insurance premium contributions in 2011, to provide that, notwithstanding the provisions described above, beginning with health insurance premiums paid in April, 2011, and ending with coverage for December, 2011, employee contributions would be required at the rates shown in the following table. The proposed rates are compared to the rates currently in effect for 2011 for nonrepresented state employees.

Proposed State Employee Monthly Contribution Rates
2011

	Current Law		Bill		Change to Current Law	
	Single	Family	Single	Family	Single	Family
Tier 1	$36	$89	$84	$208	$48	$119
Tier 2	79	198	122	307	43	109
Tier 3	188	471	226	567	38	96

Provide that covered part-time employees described in (b) above, as well as craft and related nonrepresented employees, would be required to pay the same amounts that they are required to pay on the day before the effective date of these provisions. For eligible university teaching and graduate assistants, provide that 50% of the amounts required for employees described in (a) above would be required as contributions in 2011.

If an employer is unable to modify payroll procedures in sufficient time to collect employees' increased share of the premium costs for health care coverage, as specified in these provisions, the employer would be required to recover all amounts that employees owe for the increased share of premium costs before July 1, 2011.

For local government employers that participate in a health insurance plan offered by the Group Insurance Board (GIB), provide that beginning on January 1, 2012, except as otherwise provided in a collective bargaining agreement with local police or firefighters, an employer may not offer the GIB health care coverage plan to its employees if the employer pays more than 88 percent of the average premium cost of plans offered in any tier with the lowest employee premium cost (tier-1 plan).

The treatment of these provisions would first apply to employees who are covered by a collective bargaining agreement that contains provisions inconsistent with these provisions on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.

Under current law, state employees and employees of public authorities created by the state, receive health care coverage under plans offered by the Group Insurance Board (GIB). These 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. For employees working less than 1,566 hours per year, the employee contribution must be 50% of the contribution for a full-time employee. Under the compensation plan for nonrepresented state employees and the collective bargaining agreements with represented employees, the employer pays the difference between the total premium cost and the employee share of contributions (which are shown in the table above under current law). The GIB also makes available a health insurance coverage program for local governments to utilize, if

they choose to do so.

3. GENERAL FUND LAPSES IN 2010-11 RELATING TO EMPLOYER SAVINGS IN FRINGE BENEFIT COSTS

	2010-11	2011-13
GPR-Earned	$27,891,400	
GPR-Lapse	$1,908,600	
GPR-Lapse/Transfer		$275,600,000

Transfer or lapse a total of $29,800,000 to the general fund to reflect projected savings resulting from increases in the portion of premiums that state employees must pay for health insurance and increases in the retirement contributions that state employees must pay. Specific lapse requirements would be as follows:

Require that, before July 1, 2011, the Secretary of DOA to lapse to the general fund, from the unencumbered balances of general purpose revenue and program revenue appropriations to executive-branch state agencies, other than sum sufficient appropriations and appropriations of federal revenues, an amount equal to $27,891,400. The Secretary would not be allowed to lapse any amount from program revenue appropriations under the University of Wisconsin System, from segregated revenues or from federal appropriations. Provide that the DOA Secretary may not lapse moneys if the lapse would violate a condition imposed by the federal government on the expenditure of the moneys or if the lapse would violate the federal or state constitution. Provide that the amount lapsed must be in addition to the amounts that are required to be lapsed or transferred to the general fund under 2009 Wisconsin Act 28.

Require that, before July 1, 2011, the Co-chairpersons of the Joint Committee on Legislative Organization to take actions to ensure that from general purpose revenue appropriations to the Legislature, an amount equal to $717,700 is lapsed from sum certain appropriation accounts or is subtracted from the expenditure estimates for any other type of appropriations, or both. Provide that the amount lapsed must be in addition to the amounts that are required to be lapsed or transferred to the general fund under 2009 Wisconsin Act 28.

Require that, before July 1, 2011, the Chief Justice of the Supreme Court take actions to ensure that, from general purpose revenue appropriations to the judicial branch of government, an amount equal to $1,153,400 is lapsed from sum certain appropriation accounts or is subtracted from the expenditure estimates for any other type of appropriations, or both.

Require that, before July 1, 2011, the Governor take actions to ensure that from general purpose revenue appropriations to the Office of the Governor an amount equal to $37,500 is lapsed from sum certain appropriation accounts or is subtracted from the expenditure estimates for any other type of appropriations, or both.

On an annualized basis, the Department of Administration estimates that the WRS and health insurance modifications under the bill could result in a cost reduction for the state of

$228.1 million. Of that total, it is estimated that $137.8 million annually could be lapsed or transferred to the general fund.

4. STUDY OF POTENTIAL MODIFICATIONS OF THE WISCONSIN RETIREMENT SYSTEM AND STATE EMPLOYEE HEALTH INSURANCE OPTIONS

Wisconsin Retirement System (WRS). Require the Secretary of DOA, the Director of the Office of State Employment Relations (OSER), and the Secretary of ETF to study the structure of the WRS and benefits provided under the WRS. The study must specifically address the following issues: (a) establishing a defined contribution plan as an option for participating WRS employees; (b) establishing a vesting period of one, five, or 10 years for employer contributions, and for eligibility for retirement benefits; (c) modifying the supplemental health insurance conversion credits programs; and (d) permitting employees to not make employee required contributions and limiting retirement benefits for employees who do not make employee required contributions to a money purchase annuity. Provide that, no later than June 30, 2012, the Secretary of DOA, the OSER Director, and the Secretary of ETF must report their findings and recommendations to the Governor.

Health Insurance Options. Require the OSER Director and the Secretary of ETF to study the feasibility of offering to state employees and local governmental employees covered under health care insurance plans offered by the Group Insurance Board (GIB), beginning on January 1, 2013, the options 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 defined in federal law. The OSER Director and the Secretary of ETF would also be required to study the feasibility of requiring state employees to receive health care coverage through a health benefits exchange established pursuant to the federal Patient Protection and Affordable Care Act of 2010, and creating a health care insurance purchasing pool for all state and local government employees and individuals receiving health care coverage under the Medical Assistance program. Require that, no later than June 30, 2012, the OSER Director and Secretary of ETF report their findings and recommendations to the Governor.

Under current law, the WRS is a defined benefit pension system in which participants are vested immediately. The employee share of WRS contributions are currently required to be made, but may be made by the employer on behalf of the employee. Under the supplemental health insurance conversion credits program, an employee is credited at retirement with one hour of additional sick leave credit for each hour of unused accumulated sick leave up to a maximum of 52 hours per year for all years of service through the 24th year. For all years of continuous service beyond the 24th year, an employee will be granted one hour of additional sick leave credit for each hour of previously accumulated sick leave up to a maximum of 104 hours per year. The credits may only be used for the payment of premium costs of continued state group health insurance in retirement. The value of the supplemental credits may is determined by multiplying the credited hours times the employee's highest base hourly pay rate. The supplemental credits do not provide additional sick leave to employees. The supplemental credits are in addition to sick leave credits provided to retiring employees for accumulated

unused sick leave hours.

The establishment of health savings accounts are authorized under federal law. Individuals may establish health savings accounts into which they and their employers can make federal tax-exempt contributions that can be used for the payment of certain qualified medical expenses. Annual contribution limits are established under federal law and are based on the individual's status, eligibility, and health plan coverage. As a condition of establishing a health savings account, an individual must be covered under a high-deductible health plan. The specific requirements of high-deductible health plans are provided in federal law, but generally require the payment of a certain minimum deductible and the expenditure of certain out-of-pocket expenses before an individual's medical services are covered under the plan.

5. MODIFY RETIREMENT MULTIPLIER FOR STATE EXECUTIVE AND ELECTED OFFICIAL WRS PARTICIPANTS

Provide that, for WRS creditable service performed on or after the effective date of this provision, the multiplier used to calculate the normal pension benefit be reduced from 2% to 1.6% for state and local elected officials and state executives participating in the WRS. The provision has the effect of lowering the pension benefit for service performed after the effective date of the provision.

The provision would first apply to creditable service that is performed by elected officials (other than judges) on the first day of a term of office that begins after the effective date of the provision. For Supreme Court justices, Court of Appeals judges, and Circuit Court judges, the provision would first apply to creditable service that is performed on the day on which the next Supreme Court justice, Court of Appeals judge, or Circuit Court judge assumes office after the effective date of the provision.

Under current law, when a WRS participant becomes eligible for a retirement 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. [The multiplier is not applicable to a money purchase annuity.] For current service, the multipliers are as follows: general participants (1.6%); elected and executives (2%); protective under Social Security (2.0); and protection not under Social Security (2.5%). The provision would reduce the multiplier for elected and executives to the same as that for general participants (1.6%).

6. MANDATED HEALTH INSURANCE COST REDUCTIONS AND COPAYMENTS

Provide that a current law restriction on the Group Insurance Board (GIB) modifying agreements for group insurance coverage for state employees would not apply to any agreements entered into by the GIB to modify group insurance coverage for the 2012 and 2013 calendar years. Require the GIB to design health care coverage plans for the 2012 calendar year that, after adjusting for any inflationary increase in health benefit costs, as determined by the GIB, reduces the average premium cost of plans offered in the tier with the lowest employee premium cost by

at least 5% from the cost of such plans offered during the 2011 calendar year. Require the GIB to include copayments in the health care coverage plans for the 2012 calendar year and allow GIB to require health risk assessments for state employees and participation in wellness or disease management programs.

Under current law, GIB may not enter into agreements to modify or expand group insurance coverage in a manner that conflicts with applicable statutes, or rules promulgated by ETF, 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. Under the bill, this prohibition would not apply to GIB agreements relating to group insurance coverage for the 2012 and 2013 calendar years.

7. GROUP INSURANCE BOARD AUTHORITY: WELLNESS AND DISEASE MANAGEMENT PROGRAMS

Allow the Group Insurance Board to encourage participation in wellness or disease management programs. Current law, with certain exceptions, prevents the GIB from modifying or expanding group insurance coverage in such a manner as to materially affect the level of premiums paid by the state or its employees, or the level of benefits to be provided, under any group insurance coverage plan. The bill would provide that this restriction does not prevent GIB from encouraging participation in wellness or disease management programs under any of its group insurance coverage plans.

COLLECTIVE BARGAINING AND EMPLOYMENT RELATIONS PROVISIONS

1. PUBLIC EMPLOYEE COLLECTIVE BARGAINING MODIFICATIONS

Modify the Municipal Employment Relations Act (MERA) and the State Employment Labor Relations Act (SELRA) to alter the collective bargaining rights of public employees in Wisconsin, with the exception of certain protective occupation participants under the Wisconsin Retirement System (WRS) or under the City of Milwaukee or Milwaukee County retirement systems.

Represented Employee Classification. Collective bargaining rights under current law would be retained for public safety employees only. Under MERA, a public safety employee would be defined as any municipal employee who is employed in a position classified as a protective occupation participant who is a police officer, a fire fighter, a deputy sheriff, a county traffic police officer, a person employed by a village to provide police and fire protection services, or a comparable position under the provisions of a county (Milwaukee) or city

(Milwaukee) retirement system. Under SELRA, a public safety employee would be defined as a member of the state traffic patrol or a state motor vehicle inspector. All other represented municipal and state public employees, including school teachers and employees of the Wisconsin Technical College System, would be defined as general employees for the purposes of collective bargaining and would be subject to the modifications that follow.

Prohibited Subjects of Collective Bargaining. Prohibit any municipal employer under MERA or the state under SELRA from bargaining collectively with a collective bargaining unit containing a general municipal employee with respect to any factor or condition of employment except wages. Wages would include only total base wages and would exclude any other compensation, including, but not limited to, overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions. Unless approved by referendum as described below, prohibit any increase in base wages that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement by a greater percentage than the increase in the consumer price index. The Department of Revenue would be authorized, upon a request from WERC, to determine, for the purposes of these provisions, the average annual percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the federal Department of Labor, for the 12 months immediately preceding the request from WERC.

If there is a decrease in the consumer price index, the maximum salary level that can be bargained for would be the base amount minus the percentage decline in the CPI.

Provide that, if a local governmental unit (any city, village, town, county, metropolitan sewerage district, long-term care district, transit authority, technical college district, local cultural arts district, or any other political subdivision of the state, or instrumentality of one or more political subdivisions of the state) wishes to increase the total base wages of its general municipal employees in an amount that exceeds these CPI limits, the governing body of the local governmental unit must adopt a resolution to that effect. The resolution must specify the amount by which the proposed total base wages increase will exceed the CPI limit. The resolution may not take effect unless it is approved in a referendum called for that purpose. The referendum must occur in November for collective bargaining agreements that begin the following January 1. The results of a referendum apply to the total base wages only in the next collective bargaining agreement. The referendum question must be substantially as follows: "Shall the general municipal employees in the local governmental unit receive a total increase in wages from $[current total base wages] to $[proposed total base wages], which is a percentage wage increase that is [x] percent higher than the percent of the consumer price index increase, for a total percentage increase in wages of [x]?"

These referendum provisions would also apply to elementary and secondary school districts, except that the referendum would occur in April for collective bargaining agreements that begin in July of that year. For state employees, a statewide referendum would be required, but there is no specification of the timing of the referendum or the required ballot language.

Provide that no local governmental unit, or any school district, except as provided under

MERA, may collectively bargain with its employees. If a local governmental unit has in effect, on the effective date of the bill, an ordinance or resolution that is inconsistent with this requirement, the ordinance or resolution would not apply and may not be enforced. Each local governmental unit that is collectively bargaining with its employees would be required to determine the maximum total base wages expenditure that is subject to collective bargaining under the provisions of the bill.

Collective Bargaining Unit Annual Certification. Under MERA, require the Wisconsin Employment Relations Commission (WERC) to conduct an annual election to certify the representative of the collective bargaining unit that contains a general municipal employee. The election would be required to occur no later than December 1 for a collective bargaining unit containing school district employees and no later than May 1 for a collective bargaining unit containing general municipal employees who are not school district employees. WERC would be required to certify any representative that receives at least 51 percent of the votes of all of the general municipal employees in the collective bargaining unit. If no representative receives at least 51 percent of the votes of all of the general municipal employees in the collective bargaining unit, at the expiration of the collective bargaining agreement, WERC would be required to decertify the current representative and the general municipal employees would be nonrepresented. Provide that, if a representative is decertified the affected general municipal employees may not be included in a substantially similar collective bargaining unit for 12 months from the date of decertification.

In a nonstatutory provision under the bill, require that, for each collective bargaining unit under MERA containing general municipal employees who are subject to an extension of their collective bargaining agreement, collective bargaining agreements must be terminated as soon as legally possible and employees must vote to certify or decertify their representatives as provided under the bill. Notwithstanding the dates provided above for unit certification, provide that the vote must be held in April, 2011.

Under SELRA, require WERC, in April, 2011, and no later than December 1, of each subsequent year, to conduct an election to certify the representative of a collective bargaining unit that contains a general employee. Require that the ballot include the names of all labor organizations having an interest in representing the general employees participating in the election. Allow WERC to exclude from the ballot one who, at the time of the election, stands deprived of his or her rights under labor law by reason of a prior adjudication of his or her having engaged in an unfair labor practice. Require WERC to certify any representative that receives at least 51 percent of the votes of all of the general employees in the collective bargaining unit. If no representative receives at least 51 percent of the votes of all of the general employees in the collective bargaining unit, at the expiration of the collective bargaining agreement, WERC would be required to decertify the current representative and the general employees would be nonrepresented. If a representative is decertified, the affected general employees may not be included in a substantially similar collective bargaining unit for 12 months from the date of decertification.

The WERC's certification of the results of any election would be conclusive unless

reviewed as provided under administrative and procedure review law.

Under current law, a collective bargaining unit selects a labor organization as its representative when a majority of the employees in that collective bargaining unit who are actually voting elects the labor organization as its representative. The 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.

Union Dues Provisions. Under MERA, prohibit a municipal employer from deducting labor organization dues from the earnings of a general municipal employee or supervisor. Under SELRA, prohibit the state from deducting labor organization dues from a general employee's earnings.

Provide that a general municipal or state employee would have the right to refrain from paying labor organization dues while remaining a member of a collective bargaining unit. [A public safety employee, however, may be required to pay dues, as provided under current law.]

Under current law, a fair-share agreement between the employer and a labor organization is permitted under which all of the employees in a collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members. A maintenance of membership agreement is an agreement between the employer and a labor organization representing employees that requires that all of the employees whose dues are being deducted from earnings at the time the agreement takes effect must continue to have dues deducted for the duration of the agreement and that dues must be deducted from the earnings of all employees who are hired on or after the effective date of the agreement. Under the bill, these provisions would apply only to represented public safety employees. Fair-share and maintenance of membership agreements would not be allowed for represented general employees.

Interest Arbitration under MERA. Repeal current law interest arbitration provisions that allow general municipal employees, including teachers, to petition the WERC to initiate compulsory, final and binding arbitration if: (a) a dispute involving wages, hours and conditions of employment has not been settled after a reasonable period of negotiation and mediation by the WERC; and (b) any other settlement procedures established by the parties have been exhausted. Repeal factors that an arbitrator must consider in arriving at the arbitration award decision, including the factor given greatest weight, the factor given greater weight, and other factors to be considered. Repeal WERC's authority to adopt rules pertaining to the conduct of arbitration for general municipal employees.

Under current law, for general municipal employees, either or both parties in a dispute may petition the WERC to initiate compulsory, final and binding arbitration if: (a) a dispute involving wages, hours and conditions of employment has not been settled after a reasonable period of negotiation and mediation by the WERC; and (b) any other settlement procedures established by the parties have been exhausted. The statutes establish the procedures for the stages of the arbitration process, including the petition for WERC intervention, preliminary final offers, WERC investigation, final offers, appointment of an arbitrator, public hearing, arbitration

hearing, and arbitration award. The statutes establish a variety of factors that the arbitrator must consider in arriving at the arbitration award decision. Except in arbitrations involving school district employees, the arbitrator must first give "greatest weight" to those state legislative and administrative directives that impose spending or revenue collection limitations on the municipal government. The arbitrator is required to provide a written accounting in the final arbitration decision of the consideration given to this "greatest weight" factor in making the award. Except in arbitrations involving school district employees, the arbitrator must next give "greater weight" to the economic conditions in the jurisdiction of the municipal employer. Lastly, in any arbitration involving general municipal employees, including school district employees, the arbitrator must give "weight" to a series of additional factors; however, there is no rank-ordering of these elements in terms of their relative importance.

Strikes under MERA. Provide that nothing contained in Wisconsin labor law constitutes a grant of the right to strike by any municipal employee or labor organization and such strikes are expressly prohibited. Repeal a current law provision that provides that, in addition to the other impasse resolutions under MERA, a municipal employer and labor organization may at any time, as a permissive subject of bargaining, agree in writing to a dispute settlement procedure, including authorization for a strike by municipal employees or binding interest arbitration that is acceptable to the parties for resolving an impasse over terms of any collective bargaining agreement. Repeal a current law interest arbitration provision that, after an arbitrator is appointed, but prior to the arbitration hearing, either party has the opportunity to withdraw its final offer and any agreed modifications, and if both parties withdraw their final offers, the labor organization may strike, but only after having given 10 days' written, advance notice.

Under current law, strikes by municipal employees in Wisconsin are generally prohibited under MERA. Notwithstanding this general prohibition against strikes by municipal employees, strikes involving nonprotective municipal employees, including teachers, are permitted under limited circumstances. These limited circumstances, described in the paragraph above, would be repealed under the bill.

The bill would also provide that any labor organization representing municipal public safety employees which violates the prohibition on strikes may not collect any dues under a collective bargaining agreement or under a fair-share agreement from any public safety employee covered by either agreement for a period of one year. At the end of the period of suspension, any such agreement must be reinstated unless the labor organization is no longer authorized to represent the public safety employees covered by the collective bargaining agreement or fair-share agreement, or the agreement is no longer in effect.

Under current law, any labor organization that violates the current law prohibition on strikes must be penalized by the suspension of any dues check-off agreement and fair-share agreement between the municipal employer and the labor organization for a period of one year. At the end of the period of suspension, any such agreement must be reinstated unless the labor organization is no longer authorized to represent the municipal employees covered by such dues check-off or fair-share agreement or the agreement is no longer in effect.

Other strike penalties under current law are unaffected by the bill. These provisions include: (a) any labor organization which violates the strike prohibition after an injunction has been issued must be required to forfeit $2 per member per day, but not more than $10,000 per day, with each day of continued violation constituting a separate offense; and (b) any individual who violates the strike prohibition after an injunction against a strike has been issued must be fined $10, with each day of continued violation constituting a separate offense. In addition, after the injunction has been issued, any municipal employee who is absent from work because of purported illness is presumed to be on strike unless the illness is verified by a written report from a physician to the municipal employer. The court is required to order that any fine imposed be paid by means of a salary deduction at a rate to be determined by the court.

Term of Agreements. Under MERA, provide that, except for the initial collective bargaining agreement between the parties, every collective bargaining agreement covering general municipal employees must be for a term of one year and may not be extended. No collective bargaining agreement covering general municipal employees may be reopened for negotiations unless both parties agree to reopen the collective bargaining agreement. Under current law, except for an initial contract between the parties and unless the parties otherwise agree, collective bargaining agreements covering municipal employees must be for a term of two years. In no case, however, may a contract for non-school district employees exceed a term of three years, or a contract for school district employees exceed a term of four years. Further, unless both parties agree, an arbitration award may not provide for a reopening of negotiations during the term of the collective bargaining agreement.

Under SELRA, provide that no agreements covering a collective bargaining unit containing a general employee may be for a period that exceeds one year, and each agreement must coincide with the state fiscal year. Provide that agreements covering a collective bargaining unit containing a general employee may not be extended. Under current law, agreements must coincide with the fiscal year or biennium. Current collective barraging agreements are for the 2007-09 biennium and have been extended by mutual agreement of the state and labor organizations representing state employees. Under these agreements, the extension may be terminated by either party with either 10 or 30 days notice, depending on the agreement. [On February 11, 2011, the Director of the Office of State Employment Relations (OSER) informed the state's labor unions that the contract extensions would be terminated on March 13, 2011.]

Other Provisions

Retain current law methods for peaceful settlement of disputes for general municipal employees. These methods relate to notice of commencement of contract negotiations, presentation of initial proposals, mediation, and grievance arbitration.

Repeal a declaration of policy under MERA. Under current law, the statutes specify that: "The public policy of the state as to labor disputes arising in municipal employment is to encourage voluntary settlement through the procedures of collective bargaining. Accordingly, it is in the public interest that municipal employees so desiring be given an opportunity to bargain collectively with the municipal employer through a labor organization or other representative of

the employees' own choice. If such procedures fail, the parties should have available to them a fair, speedy, effective and, above all, peaceful procedure for settlement as provided in this subchapter." The bill would repeal this language. In addition, under another MERA statutory provision, the bill deletes a statement that, in creating MERA, "the legislature recognizes that the municipal employer must exercise its powers and responsibilities to act for the government and good order of the jurisdiction which it serves, its commercial benefit and the health, safety, and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to municipal employees by the constitutions of this state and of the United States and by this subchapter."

Repeal the declaration of policy under SELRA. Under current SELRA law, a declaration of policy is made regarding the public policy of the state as to labor relations and collective bargaining in state employment. Briefly stated, it includes: (a) a discussion of public, employee, and employer interests; (b) the assertion that the orderly and constructive employment relations for employees and the efficient administration of state government are promotive of all these interests; (c) that negotiations of terms and conditions of state employment should result from voluntary agreement between the state and its employees and that employees have the option of organizing and bargaining collectively through representatives of the employee's own choosing; and (d) to encourage the practices and procedures of collective bargaining by establishing standards of fair conduct in state employment relations and by providing a convenient, expeditious and impartial tribunal in which these interests may have their respective rights determined. The bill would repeal this declaration of policy.

Modify WERC's authority to determine appropriate collective bargaining units by prohibiting WERC from deciding that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both school district employees and general municipal employees who are not school district employees. Further, provide that WERC may not decide that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both public safety employees and general municipal employees. Under current law, a collective bargaining unit under MERA is defined as a unit consisting of municipal employees who are school district employees, or of municipal employees who are not school district employees, as determined by WERC to be appropriate for the purpose of collective bargaining. The bill would add the additional restriction described above to WERC's authority in this area.

Repeal a provision that requires the Director of OSER, prior to award and under conditions established by rule by DOA, to review contracts for contractual services in order to ensure that agencies properly utilize the services of state employees, evaluate the feasibility of using limited term appointments prior to entering into a contract for contractual services, and do not enter into any contract for contractual services in conflict with any collective bargaining agreement under SELRA or UW System faculty and academic staff labor relations.

Provide that a local cultural arts district created under Subchapter V of Chapter 229 (the Madison Overture Center) would be included in the definition of a municipal employer under MERA. Under the provision, general employees of the cultural arts district would be subject to

the bill's MERA provisions. Under current law, this cultural arts district is specifically excluded from the provisions of MERA, but may collectively bargain with its employees under the provisions of subchapter I of Chapter 111 (Employment Peace).

Provide that it would be a prohibited practice for a municipal employer to violate any collective bargaining agreement affecting general municipal employees, that was previously agreed upon by the parties with respect to wages.

Repeal a provision that permits clerks in the Municipal Court in Milwaukee to bargain over supervision issues. The current law provision is inconsistent with the modifications to MERA under the bill.

Under current law, the state is not required to bargain on matters related to employee occupancy of houses or other lodging. Under the bill, this provision is repealed. The provision is inconsistent with the modifications to SELRA under the bill.

Nonstatutory language would provide that, upon termination of any collective bargaining agreement between the state and a labor organization representing state employees, the OSER Director may continue to administer those provisions of the collective bargaining agreements that the Director determines necessary for the orderly administration of the state civil service system until the compensation plan under section 230.12 of the statutes is established for the 2011–13 fiscal biennium.

Provide that, if an employee is covered under a collective bargaining agreement under SELRA, the state's compensation plan provisions would apply to that employee, except for those provisions relating to matters that are subject to bargaining under a collective bargaining agreement that covers the employee.

Require DOA to evaluate the staffing requirements of WERC and to submit the report of the evaluation to the Joint Committee on Finance under section 13.10 of the statutes.

Initial Applicability

The treatment of these provisions would first apply to employees who are covered by a collective bargaining agreement, under either MERA or SELRA, that contains provisions inconsistent with these provisions on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.

2. REPEAL COLLECTIVE BARGAINING RIGHTS FOR UNIVERSITY OF WISCONSIN SYSTEM FACULTY AND ACADEMIC STAFF

Repeal Subchapter VI of Chapter 111 that provides faculty and academic staff of the University of Wisconsin System (UW System) with the right to collectively bargain over wages, hours, and conditions of employment. Collective bargaining rights were granted to UW System faculty and academic staff under 2009 Wisconsin Act 28. Under current law, the Board of

Regents is authorized to negotiate and administer collective bargaining agreements for UW faculty and academic staff, to represent the state in its responsibility as an employer, and to coordinate its actions with the Director of the Office of State Employment Relations. To date, no collective bargaining agreements have been negotiated with faculty or academic staff. Under the bill, all provisions relating to UW System faculty and academic staff collective bargaining would be repealed.

3. LOCAL GOVERNMENT CIVIL SERVICE SYSTEMS

Require a local governmental unit (a political subdivision of the state, a special purpose district in the state, an agency or corporation, of a political subdivision or special purpose district, or a combination or subunit of any of the foregoing) that does not have a civil service system on the effective date of the bill to establish a grievance system not later than the first day of the fourth month beginning after the effective date of the bill. Provide that, to comply with the required grievance system a local governmental unit may establish either a civil service system under any provision authorized by law, to the greatest extent practicable, if no specific provision for the creation of a civil service system applies to that local governmental unit, or establish a grievance procedure as described below.

Provide that, any civil service system that is established under any provision of law, and any grievance procedure that is created under the above provisions, must contain at least all of the following provisions: (a) a grievance procedure that addresses employee terminations; (b) employee discipline; and (c) workplace safety.

If a local governmental unit creates a grievance procedure under these provisions, the procedure must contain at least all of the following elements: (a) a written document specifying the process that a grievant and an employer must follow; (b) a hearing before an impartial hearing officer; and (c) an appeal process in which the highest level of appeal is the governing body of the local governmental unit.

Provide that, if an employee of a local governmental unit is covered by a civil service system on the effective date of the bill, and if that system contains provisions that address the above provisions, the provisions that apply to the employee under his or her existing civil service system continue to apply to that employee.

Provide that the treatment of provisions first apply on the first day of the fourth month beginning after the effective date of the bill.

SHARED REVENUE AND TAX RELIEF

1. TAX INCREMENTAL FINANCING DISTRICT -- INCLUSION OF WETLANDS

Modify a current law limitation to allow a wetland that has been converted in compliance with state law to no longer be a wetland to be included in a tax incremental financing (TIF) district. Specify that for an area that is identified on a wetland map and that is within the boundaries of a TIF district, or is part of a TIF district parcel, the area would be considered part of the TIF district for determining the applicability of exemptions from, or compliance with, water quality standards that are applicable to wetlands.

2011 Act 10 exempts an activity affecting a Village of Ashwaubenon wetland from the water quality standards applicable to wetlands and from any prohibition, restriction, requirement, permit, license, approval, authorization, fee, notice hearing or procedure, penalty, specified rule promulgated, order issued, or ordinance adopted if the activity meets certain requirements, including the site of the activity is zoned for community business use and is part of a TIF district. However, under current law, a TIF district cannot include a wetland.