



## Legislative Fiscal Bureau

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February 17, 2021

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Substitute Amendment (LRBs 0021/3) to January 2021 Special Session  
Assembly Bill (LRB 1312/1): Unemployment Insurance Modernization

This memorandum provides a summary of the provisions included in the Assembly Substitute Amendment (LRBs 0021/3) to January 2021 Special Session Assembly Bill (LRB 1312/1). A copy of the Assembly Substitute Amendment is attached.

### 1. UNEMPLOYMENT INSURANCE - SYSTEMS MODERNIZATION

Require the Department of Workforce Development (DWD), no later than June 30, 2021, to undertake a project in cooperation with the Department of Administration (DOA) to update DWD's information technology systems used for processing and paying claims for unemployment insurance (UI) benefits.

A request for proposals for the project is to be issued no later than 30 days following enactment of the bill. Require DWD and DOA to report to the Joint Committee on Finance and the Joint Committee on Information Policy and Technology on the results of the request for proposals. Further, specify if the Departments cannot undertake the project by June 30, 2021, the Departments may request an extension of up to 90 days from the Joint Committee on Finance. Any request for extension must be a written submission and must include the reason for the request and a report on progress. A requested extension would be subject to a passive review of 14 working days, after which the extension would be granted if the Committee did not inform the Departments a meeting would be scheduled to consider the request. If the Committee were to schedule a meeting to consider the request, the Departments could consider the extension granted only upon a vote of approval by the Committee.

***Funding and Appropriation Supplements.*** Require DWD to seek and exhaust any federal funding available to use for the project, including any funding made available by federal COVID-19

relief legislation. Allow DWD to finance the UI modernization project under a master lease entered into as provided in current law.

Specify that DWD may submit to the Joint Committee on Finance one or more requests to make supplements or transfers under s. 13.101 (3) or (4) for the purpose of obtaining funding for the project. If the Joint Committee on Finance approves a request in whole or in part, the Committee may transfer moneys without making any of the findings required under s. 13.101 (3) or (4). These findings include that: (a) an emergency exists; (b) no funds are available for such purposes; and (c) the purposes for which a supplemental appropriation is requested have been authorized or directed by the Legislature. Current law also allows the Committee to transfer funds if it finds that: (a) unnecessary duplication of functions can be eliminated; (b) more efficient and effective methods for performing programs will result; or (c) legislative intent will be more effectively carried out because of such transfer, if legislative intent will not be changed as the result of the transfer and the purposes for which the transfer is requested have been authorized or directed by the Legislature.

**Reporting Requirements.** Require DWD and DOA to report to the Joint Committee on Finance and the Joint Committee on Information Policy and Technology on the UI modernization project. Specify that each report must include all of the following: (a) an overview of the project; (b) the status of the project, including targeted implementation dates; and (c) an analysis of the cost of the project, how the project is being funded, and all resources being used to implement the project. Require an initial report to be submitted to each Committee no later than the 60th day after the effective date of the substitute amendment, and to make additional reports each quarter, to be submitted no later than the end of the month following each such quarter, for each succeeding quarter ending after the date of the initial report. Specify that the reporting requirement ceases to apply beginning on the date that the project is considered complete, as determined by the Joint Committee on Finance.

## **2. UNEMPLOYMENT INSURANCE - WAITING WEEK**

Extend the 2019 Act 185 waiver of the UI waiting week requirement through the week ending March 13, 2021. Under Act 185, the waiting week requirement was waived from March 12, 2020, through February 7, 2021. Under Act 185 and this provision, DWD must seek the maximum amount of federal reimbursement for UI benefits that are payable for the first week of a claimant's benefit year as a result of the application of this provision.

Under current law, a UI claimant's waiting period is the first week of a claimant's benefit year for which the claimant is otherwise eligible for regular benefits. During a claimant's waiting period, no benefits are payable to the claimant. The waiting period does not affect a claimant's maximum benefit amount, which is 26 weeks of regular state benefits. However, claimants who do not reach the state's 26-week limit effectively receive one fewer week of benefits due to the waiting week requirement. A claimant must serve one waiting week per benefit year.

The CARES Act provided temporary 100% federal funding of the first week of regular UI benefits through the week ending December 26, 2020, for states with no waiting week. Under the

Continued Assistance for Unemployed Workers Act of 2020, this provision was extended to end on March 14, 2021, but at a 50% federal reimbursement level for weeks starting after December 26, 2020.

### **3. UNEMPLOYMENT INSURANCE - BENEFIT CHARGING**

Provide that the non-charging of certain benefits as provided under 2019 Act 185 be extended through the week ending March 13, 2021. Under Act 185, if a UI benefits claim or work-share plan is related to a public health emergency declared on March 12, 2020, by Executive Order 72, regular benefits for weeks occurring after March 12, 2020, and before December 31, 2020, must not be charged to an employer as normally provided. Instead, UI benefits for those weeks are charged to either: (a) the balancing account of the UI trust fund, for claims attributable to contribution employers subject to regular unemployment payroll taxes; or (b) DWD's interest and penalties account, for claims attributable to employers that pay UI benefits on a reimbursement basis and are not subject to contribution requirements.

Require DWD to presume that an initial claim for benefit years beginning on or after March 15, 2020, through March 13, 2021, relates to the public health emergency declared on March 12, 2020, by Executive Order 72, unless the claimant's most recent separation from employment is due to a labor dispute, voluntary termination of work, discharge for misconduct, or discharge for substantial fault. An employer is not required to submit a request to the Department for charging relief described under this provision.

### **4. UNEMPLOYMENT INSURANCE - WORK SHARE**

Extend the modifications of the work-share program under 2019 Act 185 to work-share plans submitted to DWD through each week that begins while a national emergency declared by the U.S. President under 50 USC 1621 in response to the 2019 novel coronavirus remains in effect, but not for work-share plans submitted on or after July 4, 2021.

Work-share programs, which are also called "short-term compensation programs" under federal law, are designed to provide a prorated unemployment benefit for employees of employers who voluntarily make an agreement with the state to reduce work hours instead of laying off workers. Under current law, as specified in Act 185 for work-share plans submitted on or after April 17, 2020, and before December 31, 2020: (a) work-share plans must cover at least two positions that are filled on the effective date of the work-share program, rather than at least the greater of 20 positions or 10% of employees in a work unit under the program's standard statutory provisions; (b) the maximum reduction in working hours under a work-share program may be either 60% of the normal hours per week of the employees included under a work-share plan, or any other maximum provided by federal law, whichever is greater, rather than a 50% typical reduction under state law; and (c) reduced working hours are to be apportioned equitably among employees in the work-share program.

The substitute amendment would extend these provisions to plans submitted before July 4,

2021, unless a national emergency declared by the U.S. President in response to the 2019 novel coronavirus were to end sooner. For states with a federally-approved work-share program, like Wisconsin, the CARES Act and the Continued Assistance for Unemployed Workers Act of 2020 provide 100% federally funded UI benefits through March 13, 2021.

## **5. UNEMPLOYMENT INSURANCE - EXTENDED BENEFITS**

Provide the DWD Secretary may waive the current statutory prohibition under which a period of extended benefits for UI may not trigger "on" in Wisconsin before 13 weeks have passed since a previous extended benefits period was in effect.

Extended benefits provided under Wisconsin's UI law are designed to lengthen the duration of benefits during periods of high unemployment. Under current law, extended benefits are triggered if DWD determines that for the current week and the preceding 12 weeks, the state insured unemployment rate: (a) equals or exceeds 120% of the average of such rates for the corresponding 13-week period during each of the preceding two calendar years and equals or exceeds 5%; or (b) equals or exceeds 6%. Wisconsin triggered onto the extended benefits program, effective May 17, 2020, due to an increase in the state's unemployment rate. Wisconsin met the criteria for turning off the program effective November 7, 2020. The provision would allow an extended benefits period to resume in Wisconsin sooner than the 13 weeks currently allowed since the previous period, provided the standard "on" criteria were met.

Currently, the federal Continued Assistance for Unemployed Workers Act of 2020, enacted December 27, 2020, allows states to disregard the 13-week mandatory "off" period for weeks through December 31, 2021, provided extended benefits triggers are met. Further, the federal government will fund 100% of extended benefits payments provided to individuals through March 14, 2021, to the extent individuals are not receiving other state or federal UI assistance. Extended benefits typically require that the state covers 50% of costs.

Specify that this provision would not apply to weeks beginning on or after June 30, 2021. Provide that all definitions under current law regarding extended benefits would apply to this provision.

## **6. COVID-19 LIABILITY EXEMPTION FOR ENTITIES**

Create a liability exemption for an entity for the death of or injury to an individual or damages caused by an act or omission resulting in or relating to exposure (directly or indirectly) to COVID-19 in the course of or through the performance or provision of the entity's functions or services. Specify that the provision would be in addition to, not in lieu of, other immunity granted by law, and would not limit immunity granted under any other provisions of law. Specify that immunity does not apply if the act or omission involves reckless or wanton conduct or intentional misconduct. The provision would apply to claims beginning on March 1, 2020, and would apply retroactively to all claims, except not to actions filed before the effective date of the bill.

For the purposes of the liability exemption create the following definitions:

"COVID-19" means the infection caused by the novel coronavirus SARS-CoV-2 or by any viral strain originating from SARS-CoV-2, and conditions associated with the infection.

"Entity" means a partnership, corporation, association, governmental entity, tribal government, tribal entity, or other legal entity, including a school, institution of higher education, or nonprofit organization. The term would also include an employer or business owner, employee, agent, or independent contractor of the entity, regardless of whether the person is paid or an unpaid volunteer, and an employer covered under Chapter 108, Unemployment Insurance and Reserves.

## **7. EMERGENCY PROCUREMENT WAIVER**

Provide that the Governor may waive certain state procurement requirements to expedite the development of a DWD information technology system used to process and pay claims for benefits, if the Governor finds the waiver necessary to complete the project in a timely manner. The Governor must require that contracts be awarded with as much competition as practicable, and must file with the DOA a statement of facts on the necessity for each waiver and the basis for selecting each contractor. The Governor would not be authorized to waive the requirements that contractual services generally be performed within the United States or that stationery and printing be purchased from the lowest responsible bidder.

Under current law, the Governor and the Secretary of DOA have the authority to waive procurement requirements under certain circumstances, such as to address an emergency. In addition, statutes specify that DOA may not delegate to executive branch agencies (other than the University of Wisconsin System or UW-Madison) the authority to enter into a contract relating to information technology prior to review and approval of the contract by DOA. Statutes also specify that large, high-risk, or costly IT projects (greater than \$1 million) must include contract stipulations authorizing DOA to review any order or amendment that would change the scope of the contract and have the effect of increasing the contract price to determine if the change is necessary and within the scope of the original contract. The Department is then authorized to negotiate with the vendor regarding any change to the original contract price. These stipulations may be excluded from a contract under certain conditions, including a 14-day passive review of the alternative contract provisions by the Joint Committee on Information Policy and Technology.

BL/lb  
Attachment





# State of Wisconsin

2021 - 2022 LEGISLATURE

January 2021 Special Session

LRBs0021/3  
MED:cdc&skw&cjs

## ASSEMBLY SUBSTITUTE AMENDMENT , TO ASSEMBLY BILL 1

1     **AN ACT to amend** 108.04 (3) (b), 108.062 (20) (intro.), 108.07 (5) (bm) 1. and  
2             108.07 (5) (bm) 2. a.; and **to create** 16.75 (6) (em), 108.07 (5) (bm) 1m., 108.14  
3             (27) and 895.476 of the statutes; **relating to:** the unemployment insurance  
4             program and immunity from liability related to COVID-19 exposure.

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### *Analysis by the Legislative Reference Bureau*

This bill does all of the following:

#### ***Unemployment insurance; IT systems***

This bill requires the Department of Workforce Development, in cooperation with the Department of Administration, to begin the process of updating the information technology systems used for processing and paying claims for unemployment insurance (UI) benefits. The bill requires an RFP for the project to be issued within 30 days after the bill's effective date, and requires the project to commence by June 30, 2021, though that deadline may be extended by the Joint Committee on Finance. The bill allows DWD to fund the update through a request for supplemental funding or a transfer of funding to the JCF or through the master lease program through DOA. The bill also allows the governor to exercise emergency procurement waivers to expedite the update. The bill requires DWD to report quarterly to JCF and the Joint Committee on Information Policy and Technology on the status of the update.

### ***Civil liability exemption for certain entities relating to COVID-19 claims***

The bill establishes a civil liability exemption for entities for any act or failure to act resulting in or relating to a person's exposure to the novel coronavirus identified as SARS-CoV-2 or COVID-19 in the course of or through the performance or provision of the entity's functions or services. Under the bill, entities are defined to include any legal entity, including businesses, associations, tribal governments or entities, governmental entities, schools, institutions of higher education, or nonprofit organizations, as well as employers or business owners, employees, agents, or independent contractors of the entity, regardless of whether they are paid or volunteers, and also include employers covered under the UI law. Under the bill, immunity does not apply if the act or omission involves reckless or wanton conduct or intentional misconduct. The immunity granted in the bill applies retroactively to claims accruing on or after March 1, 2020, except that it does not apply to actions filed before the bill goes into effect.

### ***Unemployment insurance; waiting period***

Currently, a claimant must generally wait one week after becoming eligible to receive UI benefits before the claimant may receive benefits, but the application of the one-week waiting period is temporarily suspended for benefit years that began after March 12, 2020, and before February 7, 2021. This bill extends the end date for suspending the one-week waiting period to March 14, 2021.

### ***Unemployment insurance; benefit charging***

Current law, as enacted in 2019 Wisconsin Act 185, requires DWD, when processing claims for UI benefits and evaluating work-share plans, to determine whether a claim or plan is related to the public health emergency declared by the governor under Executive Order 72. If a claim is so related, current law provides that the regular benefits for that claim for weeks occurring after March 12, 2020, and before December 31, 2020, not be charged to the employers' accounts in the unemployment trust fund or to the employers directly, as is normally required. Instead, the benefits for those weeks are, subject to numerous exceptions, to be charged to other accounts. This bill provides for this noncharging of benefits to continue through March 13, 2021, and requires DWD to presume that an initial claim for benefit years beginning on or after March 15, 2020, through March 13, 2021, relates to the public health emergency declared on March 12, 2020, by Executive Order 72 unless one of certain exceptions applies. The bill provides that an employer is not required to submit a request for charging relief for initial claims filed through March 13, 2021.

### ***Unemployment insurance; work-share programs***

Current law allows an employer to create a work-share program within a work unit of the employer. Under a work-share program, the working hours of all of the full-time employees in the program are reduced in an equitable manner in lieu of a layoff of some of the employees and a continuation of full-time employment by the other employees. A claimant for UI benefits who is included in a work-share program may receive UI benefits during his or her continued employment with the work-share employer in an amount equal to the claimant's benefit for total



unemployment multiplied by the same percentage reduction in normal working hours that the claimant incurs under the program. Current law also provides for the temporary modification of certain requirements that apply to work-share plans with respect to work-share plans submitted on or after April 17, 2020, and before December 31, 2020. This bill extends the applicability of these modifications until the earlier of the conclusion of a national emergency declared by the U.S. president in response to the 2019 novel coronavirus or July 4, 2021.

***Unemployment insurance; federal extended benefits***

Under federal law, the extended benefits program provides for additional weeks of UI benefits, which are usually funded 50 percent by the federal government and 50 percent by the particular state. The extended benefits program is activated, and deactivated, in a state when the state's insured unemployment rate or total unemployment rate reaches certain thresholds, except that federal and state laws also require an "off" period of 13 weeks before an extended benefits period may be activated following a prior extended benefits period for the state. However, the Continued Assistance for Unemployed Workers Act of 2020 provides that states may opt out of the mandatory 13-week off period between November 1, 2020, and December 31, 2021. The bill provides that DWD may, until June 30, 2021, waive this requirement for the 13-week off period under state law.

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

1           **SECTION 1.** 16.75 (6) (em) of the statutes is created to read:

2           16.75 (6) (em) The governor may waive any requirement of this subchapter,  
3           except s. 16.705 (1r), for the purpose of expediting the information technology  
4           systems project under s. 108.14 (27) if the governor finds the waiver is necessary to  
5           timely complete the project. The governor shall require the award of each contract  
6           under this paragraph to be made with such competition as is practicable under the  
7           circumstances. The governor shall file with the department a statement of facts  
8           constituting the necessity for each waiver issued under this paragraph and a  
9           statement of the basis for selection of each contractor under this procedure. This  
10          paragraph does not apply to the requirement specified in sub. (7).

11          **SECTION 2.** 108.04 (3) (b) of the statutes is amended to read:

1           108.04 (3) (b) Paragraph (a) does not apply with respect to benefit years that  
2 begin after March 12, 2020, and before ~~February 7~~ March 14, 2021. The department  
3 shall seek the maximum amount of federal reimbursement for benefits that are,  
4 during the time period specified in this paragraph, payable for the first week of a  
5 claimant's benefit year as a result of the application of this paragraph.

6           **SECTION 3.** 108.062 (20) (intro.) of the statutes is amended to read:

7           108.062 (20) SUSPENSIONS OF CERTAIN PROVISIONS. (intro.) Notwithstanding sub.  
8 (2), this subsection, and not sub. (2), applies to work-share plans submitted on or  
9 after April 17, 2020, and before ~~December 31, 2020~~ the conclusion of a national  
10 emergency declared by the U.S. president under 50 USC 1621 in response to the 2019  
11 novel coronavirus or July 4, 2021, whichever is earlier, subject to sub. (19). During  
12 that period, prior to implementing a work-share program, an employer shall submit  
13 a work-share plan for the approval of the department. In its submittal, the employer  
14 shall certify that its plan is in compliance with all requirements under this section.  
15 Each plan shall:

16           **SECTION 4.** 108.07 (5) (bm) 1. of the statutes is amended to read:

17           108.07 (5) (bm) 1. ~~The~~ Subject to subd. 1m., the department shall, when  
18 processing initial claims for regular benefits, determine whether a claim or plan is  
19 related to the public health emergency declared on March 12, 2020, by executive  
20 order 72. If a claim is so related, the regular benefits for that claim shall, except as  
21 provided in subd. 2., be paid as provided in subd. 3.

22           **SECTION 5.** 108.07 (5) (bm) 1m. of the statutes is created to read:

23           108.07 (5) (bm) 1m. For purposes of this paragraph, the department shall  
24 presume that an initial claim for benefit years beginning on or after March 15, 2020,  
25 through March 13, 2021, relates to the public health emergency declared on March

1 12, 2020, by Executive Order 72 unless the claimant's most recent separation from  
2 employment is due to a labor dispute, voluntary termination of work, discharge for  
3 misconduct, or discharge for substantial fault. An employer is not required to submit  
4 a request for charging relief under this paragraph for initial claims described in this  
5 subdivision.

6 **SECTION 6.** 108.07 (5) (bm) 2. a. of the statutes is amended to read:

7 108.07 (5) (bm) 2. a. Subdivision 1. applies only with respect to benefits payable  
8 for weeks beginning after March 12, 2020, and beginning before ~~December 31, 2020~~  
9 March 14, 2021.

10 **SECTION 7.** 108.14 (27) of the statutes is created to read:

11 108.14 (27) (a) 1. The department of workforce development shall, in  
12 cooperation with the department of administration as required under subch. VII of  
13 ch. 16, undertake a project to update its information technology systems used for  
14 processing and paying claims for benefits. The department shall seek and exhaust  
15 any federal funding available to use for the project, including any funding made  
16 available by federal COVID-19 relief legislation.

17 2. The project under this paragraph shall be undertaken no later than June 30,  
18 2021, except that if the departments are unable to undertake the project by that date,  
19 the department may request from the joint committee on finance an extension not  
20 to exceed 90 days in a written submission that includes a report on the progress on  
21 the project and the reason an extension is needed. If the cochairpersons of the joint  
22 committee on finance do not notify the department within 14 working days after the  
23 date of the request for an extension under this subdivision that the committee has  
24 scheduled a meeting for the purpose of reviewing the extension request, the  
25 extension is considered granted. If, within 14 working days after the date of the

1 request for an extension under this subdivision, the cochairpersons of the committee  
2 notify the department that the committee has scheduled a meeting for the purpose  
3 of reviewing the extension request, the department may consider the extension  
4 granted only upon approval by the committee.

5 (b) A request for proposals for the project under par. (a) shall be issued no later  
6 than the 30th day after the effective date of this paragraph .... [LRB inserts date].  
7 The department of workforce development and the department of administration  
8 shall report to the joint committee on finance and the joint committee on information  
9 policy and technology on the results of the request for proposals.

10 (c) The department may submit to the joint committee on finance one or more  
11 requests to make supplementations or transfers under s. 13.101 (3) or (4) for the  
12 purpose of obtaining funding for the project under par. (a). If the joint committee on  
13 finance approves a request in whole or in part, the committee may transfer moneys  
14 without making any of the findings required under s. 13.101 (3) or (4).

15 (d) The department may finance the project under par. (a) under a master lease  
16 entered into as provided in s. 16.76 (4).

17 (e) 1. The department of workforce development and the department of  
18 administration shall report to the joint committee on finance and the joint committee  
19 on information policy and technology on the project under par. (a) as provided in  
20 subd. 2. Each report prepared under this paragraph shall include all of the following:

- 21 a. An overview of the project.  
22 b. The status of the project, including targeted implementation dates.  
23 c. An analysis of the cost of the project, how the project is being funded, and all  
24 resources being used to implement the project.

1           2. The department shall submit an initial report under subd. 1. no later than  
2 the 60th day after the effective date of this subdivision ... [LRB inserts date]. The  
3 department shall make additional reports each quarter, which shall be submitted no  
4 later than the end of the month following each such quarter, for each succeeding  
5 quarter ending after the date of the initial report.

6           3. Subdivision 1. does not apply beginning on the date that the project is  
7 considered complete, as determined by the joint committee on finance.

8           **SECTION 8.** 895.476 of the statutes is created to read:

9           **895.476 Civil liability exemption; exposure to the novel coronavirus**  
10 **SARS-CoV-2 or COVID-19. (1)** In this section:

11           (a) "COVID-19" means the infection caused by the novel coronavirus  
12 SARS-CoV-2 or by any viral strain originating from SARS-CoV-2, and conditions  
13 associated with the infection.

14           (b) "Entity" means a partnership, corporation, association, governmental  
15 entity, tribal government, tribal entity, or other legal entity, including a school,  
16 institution of higher education, or nonprofit organization. "Entity" includes an  
17 employer or business owner, employee, agent, or independent contractor of the  
18 entity, regardless of whether the person is paid or an unpaid volunteer. "Entity"  
19 includes an employer covered under ch. 108.

20           **(2)** Beginning March 1, 2020, an entity is immune from civil liability for the  
21 death of or injury to any individual or damages caused by an act or omission resulting  
22 in or relating to exposure, directly or indirectly, to the novel coronavirus identified  
23 as SARS-CoV-2 or COVID-19 in the course of or through the performance or  
24 provision of the entity's functions or services.

