



Unemployment Insurance Advisory Council

Meeting Agenda

July 20, 2023, 10:00 a.m. – 4:00 p.m.

The public may attend by teleconference.

Phone: 415-655-0003 or 855-282-6330 (toll free) or [WebEx](#)
Meeting number (access code): 2661 821 8269 Password: DWD1

Materials: <https://dwd.wisconsin.gov/uibola/uiac/meetings.htm>

1. Call to order and introductions
2. Approval of minutes of the May 18, 2023 UIAC meeting
3. Approval of minutes of the June 15, 2023 UIAC meeting
4. Proposed bill relating to participants in clinical research trials – Rep. Gundrum
5. Department update
6. Trust Fund update – Shashank Partha
7. Program Integrity Assessment
8. Department proposals to amend the unemployment insurance law
 - D23-01 – Amend Social Security Disability Insurance Disqualification
 - D23-02 – Worker Misclassification Penalties
 - D23-03 – Discharge for use of Marijuana
 - D23-04 – Imposter Penalty
 - D23-05 – Electronic Communication and Filing
 - D23-06 – Unemployment Administration Fund – approval of LRB draft
9. Rulemaking proposal
 - Proposed scope statement for UI hearings - DWD 140
10. Labor and Management proposals to amend the unemployment insurance law
11. Research requests
12. 2023-2024 UIAC timeline

<https://dwd.wisconsin.gov/uibola/uiac/>

13. Future meeting dates: Aug. TBD, Sept. 21, Oct. 19, Nov. 16, Dec. 21

14. Adjourn

Notice

- ❖ The Council may take up action items at a time other than that listed.
- ❖ The Council may not address all agenda items or follow the agenda order.
- ❖ The Council members may attend the meeting by teleconference or videoconference.
- ❖ The employee or employer representative members of the Council may convene in closed session at any time during the meeting to deliberate any matter for potential action or items listed in this agenda, under Wis. Stat. § 19.85(1)(ee). The Council may then reconvene again in open session after the closed session.
- ❖ This location is accessible to people with disabilities. If you need an accommodation, including an interpreter or information in an alternate format, please contact the UI Division Bureau of Legal Affairs at 608-266-0399 or dial 7-1-1 for Wisconsin Relay Service.

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development

201 E. Washington Avenue, GEF 1, Madison, WI

May 17, 2023

Held In-person and Via Teleconference

The meeting was preceded by public notice as required under Wis. Stat. § 19.84.

Members: Janell Knutson (Chair), Di Ann Fechter, Sally Feistel, Corey Gall, Shane Griesbach, Susan Quam, Christopher Harris, and Scott Manley

Department Staff: Jim Chiolino (UI Division Administrator), Andy Rubsam, Jason Schunk, Shashank Partha, Jeff Laesch, Robert Usarek, Mary Jan Rosenak, Jennifer Wakerhauser (DWD Chief Legal Counsel), Caitlan Madden (DWD Deputy Legal Counsel), Arielle Exner (Legislative Liaison), Melissa Montey, Kinen Fleming, Maegan Evans, and Joe Brockman

Members of the Public: Victor Forberger (Attorney, Wisconsin UI Clinic), BJ Dernbach (Committee Clerk, Assembly Workforce Development Committee), and Brenda Lewison (Legal Action of Wisconsin)

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:05 am under the Wisconsin Open Meetings Law. Attendance was taken by roll call, and Ms. Knutson acknowledged the department staff in attendance.

2. Approval of Minutes

Ms. Knutson deferred approving the April minutes. .

3. Department Update

Ms. Knutson said that there was nothing new at this time and a report will be provided at the next meeting.

4. Quarterly Report on UI Information Technology Systems (01/01/23 – 03/31/23)

Ms. Knutson stated that the latest quarterly report on the UI information technology systems can be found in members' packets.

5. Trust Fund Update

Mr. Partha stated that the UI Trust Fund full report can be found in members' packets.

Mr. Partha stated that benefits paid through April 2023 increased by 8.7% when compared to last year at this same time. Mr. Partha stated that 2023 YTD tax receipts are over \$351 million, and the Trust Fund balance was over \$1.4 billion at the end of April 2023, a 28.9% increase when compared to last year at this same time.

6. Judicial Update

Vega v. LIRC

Mr. Rubsam stated that claimant, Pablito Vega, appealed a denial of his PUA application to the Milwaukee County circuit court. While the complaint was filed timely, it was not served on LIRC timely, so the circuit court dismissed the appeal. Vega then filed an appeal with the Wisconsin Court of Appeals in District 1; however, the appellate court affirmed the dismissal. Vega filed a motion for reconsideration, which the court denied. The deadline for appeal to Wisconsin Supreme Court is around June 11. If the case is appealed and the Wisconsin Supreme Court decides to take the case, the council will be informed.

7. Department Proposals to Amend the Unemployment Insurance Law

Ms. Knutson stated that the proposals were covered at the last meeting and that the UIAC approved proposal D23-06 – Unemployment Administrative Fund. Ms. Knutson indicated that she emailed the draft bill language and that there was no change in the drafting from the agreed bill last session.

Ms. Knutson asked whether there are questions at this time on any of the proposals.

Mr. Manley asked whether it was the intent for the bill to go to the legislature right away as an agreed bill or if it would be postponed until other items would be added.

Ms. Knutson stated that it would likely run separately as it would go through joint finance but asked the council's preference.

Mr. Griesbach indicated he would like it to go sooner.

Mr. Manley said he had no concerns with that but didn't want to speak for everyone on the Management side of the council.

It was decided that the proposal would be discussed in caucus.

8. Rulemaking Proposal

Ms. Knutson asked whether there were questions on DWD 140.

There were none.

9. Labor and Management Proposals to Amend the Unemployment Insurance Law

Ms. Knutson stated that, by the updated timeline, it was the goal for Labor and Management to exchange proposals today.

10. Research Requests

There were no research requests.

11. 2023-2024 UIAC Timeline

Ms. Knutson stated that the updated 2023-2024 UIAC timeline is included in members' packets.

12. Future Meeting Dates

Ms. Knutson provided the following meeting dates: June 15, July 20, August 17, September 21, October 19, and November 16.

Mr. Griesbach moved that Labor and Management convene in closed caucus to deliberate Department proposals, Labor and Management proposals, and other items on the agenda. The motion was seconded by Ms. Feistel. The vote was taken by roll call and the motion passed unanimously.

Management and Labor convened in closed caucus session at 10:28 am.

13. Adjourn

Caucus sessions were concluded, and the meeting adjourned at 12:45 pm.

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development

201 E. Washington Avenue, GEF 1, Madison, WI

June 15, 2023

Held In-person and Via Teleconference

The meeting was preceded by public notice as required under Wis. Stat. § 19.84.

Members: Janell Knutson (Chair), Di Ann Fechter, David Bohl, Corey Gall, Shane Griesbach, Susan Quam, Scott Manley, and Mike Gotzler

Department Staff: Jim Chiolino (UI Division Administrator), Andy Rubsam, Jason Schunk, Shashank Partha, Mike Myszewski, Robert Usarek, Aaron Wald, Kinen Fleming, Kendra Stepnowski, Jennifer Wakerhauser (DWD Chief Legal Counsel), Caitlan Madden (DWD Deputy Legal Counsel), Sam Ahrendt (DWD Legal Counsel), Rebecca Barkholz, Arielle Exner (Legislative Liaison), and Joe Brockman

Members of the Public: Victor Forberger (Attorney, Wisconsin UI Clinic), Brenda Lewison (Legal Action of Wisconsin) and Chole Zhang

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:14 am under the Wisconsin Open Meetings Law. Attendance was taken by roll call, and Ms. Knutson acknowledged the department staff in attendance.

2. Approval of Minutes of the April 20, 2023, Meeting

Motion by Mr. Gall, second by Ms. Quam, to approve the minutes of the April 20, 2023, meeting. The vote was taken by roll call and passed unanimously.

3. Approval of Minutes of the May 18, 2023, Meeting

Ms. Knutson deferred approving the minutes of the May 17, 2023, meeting

4. Department Update

Mr. Chiolino stated that the UI Tiger Teams have completed or are working on five separate projects.

Identity Proofing:

Mr. Chiolino stated that in April, the Department began mailing claimants letters with a code they have to enter online before they can get paid benefits. Mr. Chiolino stated that in July multifactor authentication will be implemented and its use will be voluntary for claimants.

Accessibility Project:

Mr. Chiolino stated that this project will be completed in September of 2023. This project will work on the claimant experience and will make the claimant portal accessible to all.

Adjudication Scheduler:

Mr. Chiolino stated that this project is under development and will be completed in September of 2023.

Knowledge Management System:

Mr. Chiolino stated that this tool will help staff answer questions from claimants quickly and accurately. Training for staff on this tool will begin in July.

Integrity Data Hub:

Mr. Chiolino stated that this fraud detection project will enable the department to send and receive data from NASWA. A dashboard will also be developed.

Mr. Manley asked who will be the users of the Knowledge Management System? Mr. Chiolino stated that the tool would be focused on UI staff who work with claimants, but the tool will be available to all UI staff.

5. Correspondence

Ms. Knutson stated that the Department received correspondence from Michelle Anderson regarding work search requirements for employees who are laid off during the winter months. A copy of Ms. Anderson's correspondence and a copy of Ms. Knutson's reply can be found in members' packets.

6. Trust Fund Update

Mr. Partha stated that the UI Trust Fund full report can be found in members' packets.

Mr. Partha stated that benefits paid through May of 2023 increased by \$12.7 million, or 7.9%, when compared to last year at the same time. Mr. Partha stated that the 2023 year-to-date tax receipts increased by \$82.7 million, and the Trust Fund balance increased by 29.5% to \$1.466 billion. Trust Fund interest increased from \$4.4 million to \$5.9 million

Mr. Manley asked how the initial benefit claims compared from last year at this time.

Mr. Partha stated he would obtain that information to Mr. Manley.

7. Department Proposals to Amend the Unemployment Insurance Law

- D23-01 Amend Social Security Disability Insurance Disqualification
- D23-02 Worker Misclassification Penalties
- D23-03 Discharge for Use of Marijuana
- D23-04 Imposter Penalty
- D23-05 Electronic Communication and Filing
- D23-06 Unemployment Administration Fund – Approval of LRB Draft

Ms. Knutson stated that copies of the proposal can be found in members' packets. Ms. Knutson reminded the Council that D23-06 was approved at the last meeting.

8. Rulemaking Proposal

- Proposed Scope Statement for UI Hearings – DWD 140

Ms. Knutson stated that members are considering this rule in caucus.

9. Labor and Management Proposals to Amend the Unemployment Insurance Law

Ms. Knutson stated that Council members will be working on proposals in caucus today and hopefully will be exchanging proposals today.

10. Research Requests

There were no research requests from the last meeting.

11. 2023-2024 UIAC Timeline

Ms. Knutson stated that the updated 2023-2024 UIAC timeline is included in members' packets.

12. Future Meeting Dates

Ms. Knutson provided the following future meeting dates:

- July 20, 2023
- August 17, 2023
- September 21, 2023
- October 19, 2023
- November 16, 2023

Motion by Mr. Manley, second by Mr. Griesbach, that the Council convene in closed caucus to deliberate department proposals, Labor and Management proposals, and other items on the agenda. The vote was taken by roll call and the motion passed unanimously.

Management and Labor convened in closed caucus session at 10:30 am.

The Council reconvened in open session at 12:49 pm.

Mr. Manley reported that Labor and Management are prepared to give a brief summary of their proposals.

Mr. Manley stated that Management's proposals were as follows:

1. Program integrity measures regarding work searches, identity verification and an employer online portal to report work refusals.
2. Require union hiring halls to report work refusals.
3. Clarify the definition of independent contractor versus employee.
4. Eliminate the quit exception – suitable work within 30 days
5. Link benefit eligibility weeks to the unemployment rate. (Management added additional benefit weeks to its prior proposal.)
6. Statutory clarifications to the definitions of misconduct and substantial fault.

Mr. Griesbach stated that Labors proposals were are follows:

1. Increase the weekly benefit rate to a percentage of the average weekly wage (AWW). Currently, Wisconsin's maximum benefit rate is 33% of the AWW. Labor wants the maximum benefit rate increased to 47% of the AWW in 2023 and 55% in 2024.
2. Adjust the one week waiting period. Limit the waiting period to apply to one out of every three benefit years.
3. Increase the UI taxable wage base from \$14,000 to \$15,500 effective January 1, 2015.

Mr. Manley requested the following information:

1. The effect of Labor Proposal #1 on the Trust Fund including projections for a 20-year high, low, and average unemployment rates.
2. The cost to employers of Labor Proposal #3.

Mr. Manley stated that Management and Labor did not discuss the LRB draft today. Mr. Manley stated that the chance of enactment would likely increase if the legislation could be broken into two separate pieces: one that contains Chapter 20 appropriations and one that does not.

Ms. Knutson responded that BOLA will contact drafter regarding this suggestion.

13. Adjourn

Motion by Mr. Griesbach, second by Mr. Manley to adjourn. The vote was taken by roll call and passed unanimously.

The meeting was adjourned at 12:59 pm.



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-1462/P2
MED:cdc

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 102.07 (8) (a); and *to create* 102.07 (8) (bw), 104.01 (2) (b) 6.
2 and 108.02 (15) (ko) of the statutes; **relating to:** participants in clinical
3 research trials.

Analysis by the Legislative Reference Bureau

This bill provides that for the purposes of the minimum wage law and worker's compensation law an individual who is a participant in a clinical research trial and receives remuneration, a stipend, or compensation for participating in the trial is not an employee of the entity that conducts the trial. The bill also provides that such participation is generally not considered covered employment under the unemployment insurance (UI) law. As a consequence, amounts paid by employers for such participation are not subject to UI contribution requirements and are not counted as base period wages for purposes of determining eligibility for UI benefits.

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

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

4 **SECTION 1.** 102.07 (8) (a) of the statutes is amended to read:
5 102.07 (8) (a) Except as provided in pars. (b) ~~and~~, (bm), and (bw), every
6 independent contractor is, for the purpose of this chapter, an employee of any

1 employer under this chapter for whom he or she is performing service in the course
2 of the trade, business, profession or occupation of such employer at the time of the
3 injury.

4 **SECTION 2.** 102.07 (8) (bw) of the statutes is created to read:

5 102.07 (8) (bw) An individual who receives remuneration, a stipend, or
6 compensation for being a participant in a clinical research trial as described in s.
7 108.02 (15) (ko).

8 **SECTION 3.** 104.01 (2) (b) 6. of the statutes is created to read:

9 104.01 (2) (b) 6. Any individual who receives remuneration, a stipend, or
10 compensation for being a participant in a clinical research trial.

11 **SECTION 4.** 108.02 (15) (ko) of the statutes is created to read:

12 108.02 (15) (ko) "Employment," as applied to work for a given employer other
13 than a government unit, an Indian tribe, or a nonprofit organization, except as the
14 employer elects otherwise with the department's approval, does not include
15 participation, by an individual who receives remuneration, a stipend, or
16 compensation, in a clinical research trial.

17 **SECTION 5. Initial applicability.**

18 (1) The treatment of s. 108.02 (15) (ko) first applies to participation occurring
19 on the effective date of this subsection.

20 **SECTION 6. Effective date.**

21 (1) This act takes effect the Sunday after publication.

22 (END)

July 20, 2023

Dear Members of the Unemployment Insurance Advisory Council:

In 2016, the Council and Legislature approved a law authorizing a 0.01% assessment of employers for program integrity efforts, which is offset by a corresponding reduction in the solvency tax. This assessment maintains funding for anti-fraud and other program integrity efforts and has been authorized each year since the law was in effect.

The law requires me to consult with the Council and to consider the balance of the Unemployment Insurance Trust Fund before approving the assessment. The assessment notice must be published by November 30.

In weighing the need for continued funding of program integrity efforts with Trust Fund balance, **I recommend that the Department invest the 0.01% assessment into the Program Integrity Fund**, which will allow the Department to continue all current program integrity operations with no corresponding tax increase on employers.

In making this recommendation, I considered the following:

- This assessment generates about \$3.573 million annually for the Program Integrity Fund. This represents about 5.7% of the annual base federal UI administrative grant.
- The Trust Fund balance on June 30, 2023, was approximately \$1.5 billion. The projected assessment amount represents about 0.24% of this balance.
- The Department has been devoting resources to coordinate anti-fraud efforts with the Wisconsin Attorney General, the US-DOL Office of Inspector General, and other federal and state agencies.
- Like most states, Wisconsin has faced increased attempts by sophisticated international groups to defraud the unemployment insurance system during the past few years. As we build our new information technology system, we are continuing to implement best practices in combatting these new types of fraud threats.

The Department intends to continue placing a priority on program integrity and anti-fraud efforts. To this end, I believe the use of the 0.01% assessment to fund integrity efforts continues to be warranted.

The Department will use these funds to continue its program integrity efforts like fraud investigations, worker classification enforcement, worker classification public outreach efforts, identity verification and cross-matching efforts, and investigation and prosecution of criminal UI fraud.

I would appreciate your continued support for this proposal, which you have given each year since 2017. I value your consideration and service to the Department and the citizens of Wisconsin.

Sincerely,



Amy Pechacek
Secretary-designee

D23-01

Amend Social Security Disability Insurance Disqualification

Date: April 20, 2023

Proposed by: DWD

Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE
Amend Social Security Disability Insurance Disqualification**

1. Description of Proposed Change

Currently, recipients of federal Social Security Disability Insurance (“SSDI”) payments are ineligible for unemployment insurance benefits under s. 108.04(12)(f). Recipients of pension payments are eligible for unemployment insurance benefits, but the unemployment benefit is reduced by the pension payment (s. 108.05(7)).

The Governor’s Budget Bill (2023 AB 43 / 2023 SB 70) proposes to amend the prohibition on receipt of UI for SSDI recipients by reducing the amount of weekly UI benefits by the proportionate amount of the claimant’s SSDI payment.

Under this proposal, a claimant who receives \$1,000 monthly in SSDI and would otherwise be eligible for \$300 weekly in UI would receive a weekly UI payment of \$69.¹

2. Proposed Statutory Changes

Section 108.04 (2) (h) of the statutes is amended to read:

A claimant shall, when the claimant first files a claim for benefits under this chapter and during each subsequent week the claimant files for benefits under this chapter, inform the department whether he or she is receiving social security disability insurance payments, as defined in ~~sub. (12) (f)~~ s. 108.05 (7m) (b). If the claimant is receiving social security disability insurance payments, the claimant shall, in the manner prescribed by the department, report to the department the amount of the social security disability insurance payments.

¹ This calculation is preliminary and subject to revision.

D23-01

Amend Social Security Disability Insurance Disqualification

Section 108.04 (12) (f) 1m. and 2m. of the statutes are renumbered 108.05 (7m) (a) and (b) and amended to read:

(a) The intent of the legislature in enacting this ~~paragraph~~ subsection is to prevent the payment of duplicative government benefits for the replacement of lost earnings or income, regardless of an individual's ability to work.

(b) In this ~~paragraph~~ subsection, "social security disability insurance payment" means a payment of social security disability insurance benefits under 42 USC ch. 7 subch. II.

Section 108.04 (12) (f) 3. of the statutes is repealed.

Section 108.04 (12) (f) 4. of the statutes is renumbered 108.05 (7m) (e).

Section 108.05 (7m) (title), (c) and (d) of the statutes are created to read:

(title) SOCIAL SECURITY DISABILITY INSURANCE PAYMENTS.

(c) If a monthly social security disability insurance payment is issued to a claimant, the department shall reduce benefits otherwise payable to the claimant for a given week in accordance with par.

(d). This subsection does not apply to a lump sum social security disability insurance payment in the nature of a retroactive payment or back pay.

(d) The department shall allocate a monthly social security disability insurance payment by allocating to each week the fraction of the payment attributable to that week.

Section 108.05 (9) of the statutes is amended to read:

(9) ROUNDING OF BENEFIT AMOUNTS. Notwithstanding sub. (1), benefits payable for a week of unemployment as a result of applying sub. (1m), (3) ~~or (7)~~, or (7m) or s. 108.04 (11) or (12), 108.06 (1), 108.13 (4) or (5) or 108.135 shall be rounded down to the next lowest dollar.

D23-01

Amend Social Security Disability Insurance Disqualification

Section 108.05 (10) (intro.) of the statutes is amended to read:

(10) DEDUCTIONS FROM BENEFIT PAYMENTS. (intro.) After calculating the benefit payment due to be paid for a week under subs. (1) to ~~(7)~~ (7m), the department shall make deductions from that payment to the extent that the payment is sufficient to make the following payments in the following order:

3. Effects of Proposed Change

- a. **Policy:** Under this proposed change, recipients of SSDI may receive UI benefits, but the benefits would be reduced due to the receipt of SSDI benefits.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would take effect on the first Sunday of the 7th month beginning after publication.

D23-01
Amend Social Security Disability Insurance Disqualification
FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

The proposal repeals the prohibition that allows an otherwise eligible claimant to receive both federal social security disability benefits (SSDI) and Unemployment Insurance (UI) benefits for the same period, and instead requires DWD to reduce a claimant's UI benefit payments by the amount of SSDI payments. Under the proposal, DWD will reduce the amount of weekly UI benefits by the proportionate amount of the claimant's SSDI payment.

UI Trust Fund Impact:

There is not expected to be any measurable impact to the UI Trust Fund.

IT and Administrative Impact:

This proposal would have an estimated one-time IT impact of \$27,946 and a one-time administrative impact of \$8,384. There are no ongoing administrative impacts to the UI program.

Trust Fund Methodology:

SSDI recipients in general have strict limits on the amount of income they may earn and continue to receive SSDI. This maximum amount ranges from \$1,260 per month for disabled individuals to \$2,110 per month for blind individuals. Assuming the individuals meet the other qualifying requirements, this would lead to a weekly benefit rate of either \$151 or \$253 per week. The average SSDI payment in Wisconsin was \$1,443 per month in 2020. Treating SSDI payments as employer contributed pension payments, each weekly benefit payment would be reduced on average by \$166 per week. For most SSDI claimants, this likely would completely offset any UI benefit available. While certain individuals would be eligible for UI, most SSDI recipients would not qualify for any UI payments. There is not expected to be a measurable impact on UI benefits or the UI Trust Fund.

D23-02
Worker Misclassification Penalties

Date: April 20, 2023
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Worker Misclassification Penalties

1. Description of Proposed Change

Administrative and criminal penalties were created, as part of the 2015-2016 UIAC Agreed Bill, for employers who intentionally misclassify their workers as independent contractors. The current penalties only apply to construction employers and are:

1. \$500 administrative penalty for each employee who is misclassified, but not to exceed \$7,500 per incident.
2. \$1,000 criminal fine for each employee who is misclassified, subject to a maximum fine of \$25,000 for each violation, but only if the employer has previously been assessed a administrative penalty for misclassified workers.
3. \$1,000 administrative penalty for each individual coerced to adopt independent contractor status, up to \$10,000 per calendar year.

The administrative penalties are deposited into the Department's program integrity fund, which is used, in part, to fund the costs of staff who investigate employee classification.

The Joint Task Force on Payroll Fraud and Worker Misclassification recommended that the penalties for intentional worker misclassification be structured to deter repeat violations.¹ The Governor's Budget Bill (2023 AB 43 / 2023 SB 70) proposes to amend the administrative penalties statutes by having the penalties potentially apply to all employers. The Bill also eliminates the \$7,500 and \$10,000 caps on the administrative penalties and doubles the penalties for subsequent violations. The Bill amends the criminal penalties to potentially apply to any employer.

¹ [Joint Task Force on Payroll Fraud and Worker Misclassification 2020 Report](#), p. 10.

D23-02
Worker Misclassification Penalties

2. Proposed Statutory Changes²

108.221 (1) (a) of the statutes is renumbered 108.221 (1) (a) (intro.) and amended to read:

Any employer ~~described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures~~ who knowingly and intentionally provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee shall, for each incident, be assessed a penalty by the department as follows:

1. For each act occurring before the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$500 for each employee who is misclassified, ~~but not to exceed \$7,500 per incident.~~

Section 108.221 (1) (a) 2. of the statutes is created to read:

For each act occurring after the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$1,000 for each employee who is misclassified.

108.221 (2) of the statutes is renumbered 108.221 (2) (intro.) and amended to read:

Any employer ~~described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures~~ who, through coercion, requires an individual to adopt the status of a nonemployee shall be assessed a penalty by the department as follows:

- (a) For each act occurring before the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$1,000 for each individual so coerced, ~~but not to exceed \$10,000 per calendar year.~~

² Subject to revision to ensure cross-references are corrected.

D23-02
Worker Misclassification Penalties

Section 108.221 (2) (b) of the statutes is created to read:

For each act occurring after the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$2,000 for each individual so coerced.

108.24 (2m) of the statutes is amended to read:

Any employer ~~described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures~~ who, after having previously been assessed an administrative penalty by the department under s. 108.221 (1), knowingly and intentionally provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee shall be fined \$1,000 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each violation. The department may, regardless of whether an employer has been subject to any administrative assessment under s. 108.221 or any other penalty or assessment under this chapter, refer violations of this subsection for prosecution by the department of justice or the district attorney for the county in which the violation occurred.

3. Effects of Proposed Change

- a. **Policy:** The proposed change will permit the Department to assess administrative penalties against any employer that intentionally misclassifies workers as independent contractors and will increase the amount of the penalties for subsequent violations.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached.

D23-02
Worker Misclassification Penalties

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective for employees misclassified after the law change is enacted.

D23-02
Worker Misclassification Penalties

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

Current law requires DWD to assess an administrative penalty against an employer engaged in construction projects or in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law. The penalty under current law is \$500 for each employee who is misclassified, not to exceed \$7,500 per incident. Current law additionally requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an individual to adopt the status of a nonemployee in the amount of \$1,000 for each individual so coerced, but not to exceed \$10,000 per calendar year. Penalties are deposited in the unemployment program integrity fund.

The proposal removes the \$7,500 and \$10,000 limitations on these penalties and provides that the penalties double for each act occurring after the date of the first determination of a violation. The proposal also removes the limitations on the types of employers to which the penalties apply, allowing them to be assessed against any type of employer that violates the above prohibitions.

UI Trust Fund Impact:

This proposal is expected to have a positive but indeterminate impact on the Trust Fund because of the incentive for employers to correctly register as an employer and correctly list employees to avoid penalties.

IT and Administrative Impact:

Ongoing administrative impact to the UI program is indeterminate.

D23-03
Discharge for Use of Marijuana

Date: April 20, 2023
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Discharge for Use of Marijuana

1. Description of Proposed Change

Under current state law, the possession of marijuana is illegal. A worker who is discharged from employment may be found ineligible for unemployment insurance benefits on the grounds of misconduct if the worker violates an employer's written controlled substances policy under s. 108.04(5)(a). The use of marijuana may also result in a discharge for substantial fault.

The Governor's Budget Bill (2023 AB 43 / 2023 SB 70) proposes to legalize and regulate marijuana. The Bill also proposes that "misconduct" under s. 108.04(5) and substantial fault under s. 108.04(5g) do not include the employee's use of marijuana off the employer's premises during nonworking hours or a violation of the employer's policy concerning such use, unless termination of the employee because that use is permitted under s. 111.35, as amended by the Budget Bill.

2. Proposed Statutory Change

Section 108.04 (5m) of the statutes is created to read:

DISCHARGE FOR USE OF MARIJUANA. (a) Notwithstanding sub. (5), "misconduct," for purposes of sub. (5), does not include the employee's use of marijuana off the employer's premises during nonworking hours or a violation of the employer's policy concerning such use, unless termination of the employee because of that use is permitted under s. 111.35.

(b) Notwithstanding sub. (5g), "substantial fault," for purposes of sub. (5g), does not include the employee's use of marijuana off the employer's premises during nonworking hours or a violation of the employer's policy concerning such use, unless termination of the employee because of that use is permitted under s. 111.35.

D23-03

Discharge for Use of Marijuana

3. Effects of Proposed Change

a. Policy: The proposal would ensure that a person would not be denied UI benefits for recreational use of marijuana during non-working hours unless termination for that use is permitted under the fair employment law.

b. Administrative: Staff would need to be trained on the implementation of this law.

c. Fiscal: A fiscal estimate is unavailable.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective on the effective date of the legalization of marijuana.

D23-04
Imposter Penalty

Date: April 20, 2023
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Imposter Penalty

1. Description of Proposed Change

When someone makes a false statement and claims and receives unemployment insurance benefits in the name of another person, the person who filed the claim must repay the benefits and pay an administrative assessment (penalty) in the amount of the overpayment.¹

However, when someone makes a false statement to attempt to claim benefits in the name of another person but is unsuccessful because the Department discovers the fraud before benefits are paid, there is no penalty available to assess against the imposter.

The Department proposes to create a new \$5,000 penalty to assess against all imposters who make false statements for the purpose of attempting to receive benefits in the name of another person on an initial claim for their own benefit, but who fail to obtain benefits. This penalty would apply to both imposters who fraudulently receive benefits and those who do not receive benefits as a result of their fraudulent claim. The policy reason for this proposal is to deter people from attempting to file false claims using the credentials of another person for their own benefit.

Collection of the current administrative assessment is eliminated. The Department proposes to credit the new \$5,000 penalty to the interest and penalty appropriation.

¹ [Wis. Stat. § 108.04\(11\)\(cm\)](#).

D23-04
Imposter Penalty

2. Proposed Statutory Changes

Section 108.04 (11) (cm) of the statutes is amended to read:

If any person makes a false statement or representation in order to obtain benefits in the name of another person for their own benefit, the benefits received by that person constitute a benefit overpayment. Such person may, by a determination or decision issued under s. 108.095, be required to repay the amount of the benefits obtained and be assessed an administrative ~~assessment in an additional amount equal to the amount of benefits obtained.~~ penalty of \$5,000.00. A person who makes a false statement or representation on an initial claim to intentionally obtain benefits in the name of another person for their own benefit, but fails to obtain benefits, will be assessed an administrative penalty of \$5,000.00.

Non-statutory provision:

(1) The treatment of s. 108.04 (11) (cm) first applies to determinations issued on the effective date of this subsection.

3. Effects of Proposed Change

- a. **Policy:** The proposed change is designed to deter people from filing false unemployment claims in the name of another person.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

D23-04
Imposter Penalty

5. Proposed Effective/Applicability Date

The treatment of section 108.04 (11) (cm) will apply to determinations issued on or after the effective date of the agreed-upon bill.

D23-04
Imposter Penalty

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

The Department proposes to create a new \$5,000 penalty to assess against all imposters who make false statements for the purpose of attempting to receive benefits in the name of another person on an initial claim for their own benefit. This penalty would apply to imposters who fraudulently receive benefits as an additional penalty for those individuals.² The new penalty would also apply to those who do not receive unemployment benefits as a result of their fraudulent claim. Further, the Department proposes to eliminate the current administrative assessment in an amount equal to the benefits overpaid as a result of fraudulent claims.

The penalty revenue will be credited to the interest and penalty appropriation.

UI Trust Fund Impact:

Since the penalty revenue is credited to the interest and penalty appropriation, there is no measurable UI Trust Fund impact.

IT and Administrative Impact:

There is no IT cost for this proposal. There is an estimated \$560 administrative cost to implement.

UI Trust Fund Methodology:

There is no measurable impact on the UI Trust Fund. It is expected that the increased fine will discourage identity fraud, but the impact cannot be estimated.

IT and Administrative Impact Methodology:

It is estimated that there would be 10 hours of administrative work updating documents and materials to reflect the new penalty. This is estimated to cost \$560. The new penalty will be expected to use the current process for establishing identity fraud penalty so there is no expected IT cost.

The penalty is expected to be assessed on fewer than ten people annually.

² If any person makes a false statement or representation in order to obtain benefits in the name of another person, the benefits received by that person constitute a benefit overpayment. Under current law, such person may, by a determination or decision issued under s. 108.095, be required to repay the amount of the benefits obtained and be assessed an administrative assessment in an additional amount equal to the amount of benefits obtained.

D23-05
Electronic Communication and Filing

Date: April 20, 2023
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Electronic Communication and Filing

1. Description of Proposed Change

Employers must file quarterly tax and wage reports showing the names, Social Security numbers, and wages paid to their employees. Employers with at least 25 employees must file those reports electronically, but all employers may file electronically. Electronic filing is more efficient for employers, ensures that reports are not lost in the mail, and reduces administrative costs for the Department. Employers who make contribution payments of at least \$10,000 annually must make those payments by electronic funds transfer but any employer may do so. Currently, about 96% of employers file their tax and wage reports electronically and pay their contributions electronically. Current law also permits the Department to electronically communicate with those who opt for that form of communication—though not all Department communication can currently be sent electronically.

The Department proposes that the electronic filing, electronic payment, and electronic communication provisions be mandatory unless the person demonstrates good cause for being unable to use the electronic method.¹ “Good cause” would be defined to include employers with limited or no internet connection, the filer having digital literacy concerns, the filer having communication barriers (such as a vision disability or other disability that prevents the ease of electronic filing, or being an individual with limited English proficiency), or other circumstances that make electronic filing unusually difficult, as determined by the Department. The proposal

¹ The 2021 Budget Bill (AB 68 / SB 111) included a similar proposal that would have defined “good cause” by administrative rule. That proposal was not included in the final Budget Act.

D23-05
Electronic Communication and Filing

also provides that the Department may use electronic records and electronic signatures. The provision related to electronic communication will be effective when the Department has the technological capability to fully implement it. The tax filing and payment provisions will be effective on January 1, 2025, so that employers have enough time to adjust to the new electronic filing and payment requirements.

The Department has begun the process of modernizing its unemployment insurance information technology systems with the expectation that a new system will result in administrative efficiencies for the Department and better customer service. This proposal will ensure the maximization of such efficiencies and service improvements while safeguarding the rights of those whose access to electronic means is severely limited or unavailable.

2. Proposed Statutory Changes²

Section 108.14 (2e) of the statutes is amended to read:

The department ~~may~~ shall provide a secure means of electronic interchange between itself and employing units, claimants, and other persons that, ~~upon request to and with prior approval by the department, may~~ shall be used for departmental transmission or receipt of any document specified by the department that is related to the administration of this chapter and related federal programs in lieu of any other means of submission or receipt specified in this chapter. The secure means of electronic interchange shall be used by employing units, claimants, and other persons unless a person demonstrates good cause for not being able to use the secure means of electronic interchange. For purposes of this subsection, good cause includes individuals with limited or no internet connection, the individual having digital literacy concerns, the individual having communication barriers (such as a vision disability or other disability that prevents the ease of

² Subject to revision to ensure cross-references are corrected.

D23-05
Electronic Communication and Filing

electronic filing, or being an individual with limited English proficiency), or other circumstances that make electronic filing unusually difficult for the individual, as determined by the department. Subject to s. 137.25 (2) and any rules promulgated thereunder, the department may permit the use of electronic records and electronic signatures for any document specified by the department that is related to the administration of this chapter or any related federal program. If a due date is established by statute for the receipt of any document that is submitted electronically to the department under this subsection, then that submission is timely only if the document is submitted by midnight of the statutory due date.

Section 108.17 (2b) of the statutes is amended to read:

The department shall prescribe a form and methodology for filing contribution reports under sub. (2) electronically. ~~Each employer of 25 or more employees, as determined under s. 108.22 (1) (ae), that does not use an employer agent to file its contribution reports under this section shall file its contribution reports electronically in the manner and form prescribed by the department, unless the employer demonstrates good cause for not being able to file contribution reports electronically. For purposes of this subsection, good cause includes employers with limited or no internet connection, the filer having digital literacy concerns, the filer having communication barriers (such as a vision disability or other disability that prevents the ease of electronic filing, or being an individual with limited English proficiency), or other circumstances that make electronic unusually difficult for the employer, as determined by the department. Each employer that becomes subject to an electronic reporting requirement under this subsection shall file its initial report under this subsection for the quarter during which the employer becomes subject to the reporting requirement. Once an employer becomes subject to a reporting requirement under this subsection,~~

D23-05
Electronic Communication and Filing

~~it shall continue to file its reports under this subsection unless that requirement is waived by the department.~~

Section 108.17 (7) (a) of the statutes is amended to read:

~~Each employer whose net total contributions paid or payable under this section for any 12-month period ending on June 30 are at least \$10,000 shall pay all contributions under this section and all reimbursements due under ss. 108.15 to 108.152 by means of electronic funds transfer or other electronic method beginning with the next calendar year, unless the employer demonstrates good cause for not being able to pay contributions or reimbursements by electronic funds transfer. For purposes of this subsection, good cause includes employers with limited or no internet connection, the filer having digital literacy concerns, the filer having communication barriers (such as a vision disability or other disability that prevents the ease of electronic filing, or being an individual with limited English proficiency), or other circumstances that make electronic filing unusually difficult for the employer, as determined by the department. Once an employer becomes subject to an electronic payment requirement under this paragraph, the employer shall continue to make payment of all contributions by means of electronic funds transfer unless that requirement is waived by the department.~~

108.205 (2) of the statutes is amended to read:

~~Each employer of 25 or more employees, as determined under s. 108.22 (1) (ae), that does not use an employer agent to file its reports under this section shall file the quarterly report under sub. (1) electronically in the manner and form prescribed by the department, unless the employer demonstrates good cause for not being able to file reports electronically. For purposes of this subsection, good cause includes employers with limited or no internet connection, the filer having digital literacy concerns, the filer having communication barriers (such as a vision disability or~~

D23-05
Electronic Communication and Filing

other disability that prevents the ease of electronic filing, or being an individual with limited English proficiency), or other circumstances that make electronic filing unusually difficult for the employer, as determined by the department. ~~An employer that becomes subject to an electronic reporting requirement under this subsection shall file its initial report under this subsection for the quarter during which the employer becomes subject to the reporting requirement. Once an employer becomes subject to the reporting requirement under this subsection, the employer shall continue to file its quarterly reports under this subsection unless that requirement is waived by the department.~~

Non-statutory provisions:

(1) UNEMPLOYMENT INSURANCE; ELECTRONIC INTERCHANGE. The department of workforce development shall submit a notice to the legislative reference bureau for publication in the Wisconsin Administrative Register indicating the date upon which the department is able to implement the treatment of s. 108.14 (2e).

(2) The treatment of ss. 108.17 (2b), 108.17 (7) (a) and 108.205 (2) shall take effect on January 1, 2025.

D23-05
Electronic Communication and Filing

3. Effects of Proposed Change

- a. **Policy:** The proposed change will result in increased efficiencies and improved experiences for claimants and employers.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

The treatment of section 108.14 (2e) will take effect on the date specified in the notice published in the register. The other provisions will take effect on January 1, 2025.

D23-05

Electronic Communication and Filing

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

Under current law, employers must file quarterly tax and wage reports showing the names, Social Security numbers, and wages paid to their employees. Employers with at least 25 employees must file those reports electronically. Electronic filing ensures that reports are not lost in the mail and reduce administrative costs for the Department. Employers who make contribution payments of at least \$10,000 annually must make those payments by electronic funds transfer, although any employer may do so. Current law also permits the Department to electronically communicate with employers who opt for that form of communication—though not all communication with the Department can currently be electronic.

This proposal makes the electronic filing, electronic communication, and electronic payment provisions mandatory for employers unless the employer demonstrates good cause for being unable to use the electronic method. This proposal mandates electronic communication for claimants unless the claimant has good cause for being unable to use the electronic method. The proposal also provides that the Department may use electronic records and electronic signatures. The provision related to electronic communication will be effective when the Department has the technological capability to fully implement it.

The Department has begun the process of modernizing the unemployment insurance information technology systems with the expectation that a new system will result in administrative efficiencies for the Department and better service for employers and claimants. This proposal will ensure the maximization of such efficiencies and service improvements.

UI Trust Fund Impact:

This proposal is not expected to have a UI Trust Fund impact.

IT and Administrative Impact:

If this proposal is implemented as a part of a new system, then the IT costs and administrative impacts will be attributed to that modernization effort.

If this proposal is implemented before the modernization effort, then the estimated cost would be \$49,840 for IT and \$16,447 for administration for a total of \$66,287.

UI Trust Fund Methodology:

Any Trust Fund impacts resulting from modern technology and ease of reporting will be attributed to the technology modernization project.

IT and Administrative Impact Methodology:

Implementation is expected to be a part of a modernization effort. If implemented separately, the majority of the cost is changing hard-coded correspondence.

D23-06
Creation of Administrative Fund

Date: April 20, 2023
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Creation of Administrative Fund

1. Description of Proposed Change

The Department receives federal funds to operate the unemployment insurance program. It also collects interest and penalties from employers and penalties from claimants. The penalties and interest incentivize timely reporting and payments by employers and provide an additional source of revenue for the Department to cover shortfalls in the federal administrative grant. The amounts that the Department receives are appropriated under state law for administration of the unemployment program.

State law previously provided that amounts related to the administration of the unemployment insurance program were to be deposited into the “Unemployment Administration Fund.” That fund was eliminated in 1985 Wisconsin Act 29 (the 1985 Budget Act) and the appropriations were transferred to the general fund. Chapter 108 was amended to repeal references to the Unemployment Administration Fund and to refer to the “Administrative Account.”¹ A review of the legislative history reveals that the amendments were made for accounting purposes at that time. However, other funds are created in chapter 108, such as the Unemployment Program Integrity Fund. The 1985 changes have resulted in different terminology between chs. 20 and 108 to describe the same things, resulting in confusion and inaccurate references. The Department proposes to eliminate the “Administrative Account” and clarify the unemployment insurance appropriations references in Chapter 108 to be consistent with current State accounting practices.

¹ Wis. Stat. § 108.20.

D23-06
Creation of Administrative Fund

It would be clearer to specify the appropriation for deposit of funds, as is the case with other statutes, instead of generally referencing the administrative account. This will ensure that funds are deposited correctly and that payments are made from the correct appropriation.

The Unemployment Program Integrity Fund comprises a variety of sources, including penalties assessed for claimant fraud as well as against employers for intentional worker misclassification.² The Unemployment Interest Payment Fund comprises funds collected from the special employer assessment to repay interest on federal loans if the trust fund balance is insufficient to pay benefits.³ The amounts in these Funds are designated as “nonlapsible,” which means that these amounts may not be transferred to the General Fund to balance the budget.

The Department proposes to eliminate the Administrative Account and recreate a fund, the Unemployment Administration Fund, for receiving the employer interest and penalties collected under section 108.22(1) and any other amounts the Department collects that are not designated for another fund. This new fund would be, as the prior Unemployment Administration Fund was, designated as “nonlapsible.” The purpose of this proposal is to provide consistent treatment for the amounts collected by the Department and to better ensure that amounts paid by employers remain with the unemployment program.

The following chart shows the proposed changes from 2021 SB 899:

Section	Change	Reason
1 & 22	Create an appropriation for LIRC to receive transcript and copying fees.	Originally requested by LIRC in the 2015 State Budget process. Provides an appropriation for receiving fees currently collected by LIRC.
2	Clarifies location for deposit of assessment for program administration.	Department may assess employers an assessment to ensure funding for the UI program. This clarifies which appropriation would handle the funds.

² Wis. Stat. § 108.19(1s).

³ Wis. Stat. §§ 108.19(1m) to (1q).

D23-06
Creation of Administrative Fund

3	Amendment to the appropriation that primarily receives employer interest and penalties to receive additional sources of funds.	Consolidates certain appropriations and clarifies language.
4	Repeals the appropriation in s. 20.445(1)(gg).	Repeals an appropriation that is no longer used, related to technology assessments.
5	Amends s. 20.445(1)(gh).	Repeals an obsolete reference to 1997 WI Act 39.
6	Repeals the appropriation in s. 20.445(1)(gm).	Repeals an appropriation related to the employer handbook because those funds are redirected to the (gd) appropriation (employer interest and penalties).
7-10	Amends the appropriations in s. 20.445(1)(n)-(ne).	Updates references to federal law.
11	Amends s. 20.445(1)(u).	Updates cross-reference for interest payment fund.
12	Amends s. 20.445(1)(v).	Updates cross-references for program integrity fund.
13-14	Amends sections in ch. 25.	Updates cross-references.
15	Amends s. 103.05(5)(d)	Updates cross-reference for UI appropriations.
16 & 68	Repeal “administrative account.”	The “administrative account” is repealed and replaced by the Unemployment Administration Fund. State moneys are supposed to be handled by appropriations and funds, not accounts. This removes the references to the account in favor of the new Fund.
17, 23, 24, 26, 27, 31, 32, 34, 47, 48, 53, 65, 66, 67, 69	Repeals references to the “administrative account” and replaces those references with the specific appropriation in s. 20.445(1).	This change ensures that the unemployment appropriations are drafted consistent with current State budget practices and removes ambiguity regarding the appropriate appropriation applicable to certain moneys. Some of these statutes are also amended to update references to federal law.
18-21	Amend s. 108.07(5)(am)-(6).	Updates cross-references. Also ensures that benefits that would be chargeable related to substantial fault would be treated the same as misconduct.
25, 28, 30	Repeals and amends references regarding costs of printing certain materials.	Consolidates language regarding printing forms and handbooks. Replaces references to the “administrative account” with a specific appropriation for consistency.
29	Amends and renumbers s. 108.14(18)	To move the requirement that the Department informs the Council about payments for IT projects with assessed funds.

D23-06
Creation of Administrative Fund

52	Amends and renumbers s. 108.19(1)	To modernize and clarify language.
33, 49-51, 54-64	Amends s. 108.19	To clarify the treatment of funds under the interest payment fund and program integrity fund.
35-45	Amends s. 108.161	To modernize provisions related to federal Reed Act moneys.
46	Amends s. 108.17(2m)	To modernize language.
67	Amends and moves statute regarding use of contributions for administrative purposes.	If federal law is changed to permit this purpose, the Department prefers the proposed language in Section 30. This statutory language has apparently not been updated since 1943.
71	Transfers funds to the appropriation in s. 20.445(1)(gd).	It is necessary to transfer any remaining funds in these appropriations, which are being repealed.

2. Proposed Statutory Changes

The statutory language for this proposal is attached as it was presented to the Legislature during the 2021 session in 2021 SB 899.

3. Effects of Proposed Change

- a. **Policy:** The proposed change will better ensure that employer interest and penalties remain with the unemployment insurance program.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D23-06
Creation of Administrative Fund

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by Technical Services Section

Trust Fund Impact:

This law change proposal is not expected to have any Trust Fund impact.

IT and Administrative Impact:

This law change proposal is not expected to have an IT or administrative impact.

Summary of Proposal:

This law change proposal would recreate an Administrative Fund for receiving the employer interest and penalties collected under section 108.22(1) and any other amounts the UI Division collects that are not designated for another fund. Like other Funds related to the unemployment program, the amounts in the newly recreated fund would be designated as “nonlapsible.” The purpose of this proposal is to provide consistent treatment for the amounts collected by the Department and to better ensure that amounts paid by employers remain with the unemployment program.

Trust Fund Methodology

This law change proposal is not expected to have any Trust Fund impact.

IT and Administrative Impact Methodology

This law change proposal is not expected to have an IT or administrative impact.

The most recent lapse expenditures of employer interest and penalties monies occurred in SFY16 and SFY17 of approximately \$2.67 million and \$2.23 million respectively. This proposal would result in an additional \$2 - \$3 million in funds remaining within the UI program during years where lapse is in effect.



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5846/1
MED&EAW:cjs&wlj

2021 SENATE BILL 899

February 1, 2022 - Introduced by COMMITTEE ON LABOR AND REGULATORY REFORM.
Referred to Committee on Labor and Regulatory Reform.

1 **AN ACT** *to repeal* 20.445 (1) (gg), 20.445 (1) (gm), 108.02 (1), 108.14 (7) (c) and
2 108.14 (23) (d); *to renumber and amend* 20.445 (1) (gc), 20.445 (1) (gd), 20.445
3 (1) (gh), 108.14 (12) (e), 108.14 (18), 108.19 (1), 108.19 (1m), 108.19 (1n), 108.19
4 (1p), 108.19 (1q), 108.19 (1s), 108.19 (2), 108.19 (2m) and 108.19 (4); *to*
5 *consolidate, renumber and amend* 108.14 (12) (a) to (d), 108.161 (1) and
6 (1m) and 108.161 (5) and (6); *to amend* 20.445 (1) (n), 20.445 (1) (nb), 20.445
7 (1) (nd), 20.445 (1) (ne), 20.445 (1) (u), 20.445 (1) (v), 25.17 (1) (xe), 25.17 (1) (xf),
8 103.05 (5) (d), 108.04 (11) (f), 108.07 (5) (am) (intro.), 108.07 (5) (am) 1., 108.07
9 (5) (am) 3., 108.07 (6), 108.09 (5) (b), 108.14 (2m), 108.14 (3m), 108.14 (16),
10 108.16 (5) (c), 108.16 (6) (k), 108.16 (6) (m), 108.16 (8) (f), 108.161 (title), 108.161
11 (2), 108.161 (3), 108.161 (3e), 108.161 (4), 108.161 (7), 108.161 (8), 108.161 (9),
12 108.162 (7), 108.17 (2m), 108.17 (3), 108.17 (3m), 108.18 (7) (a) 1., 108.18 (7) (h),
13 108.19 (1e) (a), 108.19 (1e) (d), 108.19 (1f) (a), 108.19 (1f) (c), 108.22 (1) (am) and
14 108.22 (1m); *to repeal and recreate* 108.19 (title) and 108.20; and *to create*

SENATE BILL 899

- 1 20.427 (1) (g), 108.19 (1) (d), 108.19 (1e) (cm) and 108.19 (1m) (e) of the statutes;
2 **relating to:** various changes to the unemployment insurance law and making
3 an appropriation.

Analysis by the Legislative Reference Bureau

This bill makes various changes in the unemployment insurance (UI) law, which is administered by the Department of Workforce Development. Significant changes include all of the following:

Segregated fund

The bill creates a segregated fund to receive various program revenue moneys received by DWD under the UI law that are not otherwise credited to other segregated funds, including various moneys collected by DWD as interest and penalties under the UI law and all other nonfederal moneys received for the administration of the UI law that are not otherwise appropriated. Current law provides for depositing these revenues in appropriations in the general fund.

Other changes

The bill makes various changes to a) reorganize, clarify, and update provisions relating to the financing of the UI law; and b) address numerous out-of-date or erroneous cross-references in the UI law, including all of the following:

1. Repealing and consolidating certain appropriations and making other changes to clarify the funding sources and receiving appropriations for various revenues and expenses under the UI law.
2. Creating a program revenue appropriation for the Labor and Industry Review Commission to collect moneys received for the copying and generation of documents and for other services provided in carrying out its functions.
3. Deleting obsolete references to state laws.
4. Correcting various cross-references that are otherwise incomplete or erroneous.
5. Replacing certain references to provisions in federal acts or to the Internal Revenue Code with references to the U.S. Code in order to facilitate accessibility to federal law.
6. Making other nonsubstantive changes to the UI law to improve organization, modernize language, and provide further clarity, specificity, and consistency in the law.

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

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

SENATE BILL 899

1 **SECTION 1.** 20.427 (1) (g) of the statutes is created to read:

2 20.427 (1) (g) *Agency collections.* All moneys received from fees or other
3 charges for copying of documents, generation of copies of documents from optical disc
4 or electronic storage, publication of books, and other services provided in carrying
5 out the functions of the commission.

6 **SECTION 2.** 20.445 (1) (gc) of the statutes is renumbered 20.445 (1) (wc) and
7 amended to read:

8 20.445 (1) (wc) *Unemployment administration.* ~~All From the unemployment~~
9 administration fund, all moneys received by the department under s. 108.19 ~~not~~
10 ~~otherwise appropriated under this subsection (1) for the administration of ch. 108.~~

11 **SECTION 3.** 20.445 (1) (gd) of the statutes is renumbered 20.445 (1) (wd) and
12 amended to read:

13 20.445 (1) (wd) *Unemployment interest and penalty payments.* ~~All From the~~
14 unemployment administration fund, all moneys received as interest and penalties
15 collected under ss. 108.04 (11) (c) and (cm) ~~and (13) (e) and 108.22~~ except interest and
16 penalties deposited under s. 108.19 (1q), ~~and forfeitures under s. 103.05 (5), all~~
17 ~~moneys not appropriated under par. (gg) and 108.20 (3), all moneys received as~~
18 forfeitures under s. 103.05 (5), all moneys received under s. 108.09 (5) (c), all moneys
19 received under s. 108.14 (16), all moneys received under s. 108.18 (1) (c), all moneys
20 transferred to this appropriation account from the appropriation account under par.
21 (gh) (wh), and all other nonfederal moneys received for the employment service or
22 for the administration of ch. 108 that are not otherwise appropriated under this
23 subsection, for the payment of benefits specified in s. 108.07 (5) ~~and 1987 Wisconsin~~
24 ~~Act 38, section 132 (1) (e), for the payment of interest to employers under s. 108.17~~
25 (3m), for research relating to the condition of the unemployment reserve fund under

SENATE BILL 899**SECTION 3**

1 s. 108.14 (6), for administration of the unemployment insurance program and federal
2 or state unemployment insurance programs authorized by the governor under s.
3 16.54, for satisfaction of any federal audit exception concerning a payment from the
4 unemployment reserve fund or any federal aid disallowance concerning the
5 unemployment insurance program, for assistance to the department of justice in the
6 enforcement of ch. 108, for the payment of interest due on advances from the federal
7 unemployment account under ~~title XII of the social security act~~ 42 USC 1321 to 1324
8 to the unemployment reserve fund, and for payments made to the unemployment
9 reserve fund to obtain a lower interest rate or deferral of interest payments on these
10 advances, ~~except as otherwise provided in s. 108.20.~~

11 **SECTION 4.** 20.445 (1) (gg) of the statutes is repealed.

12 **SECTION 5.** 20.445 (1) (gh) of the statutes is renumbered 20.445 (1) (wh) and
13 amended to read:

14 20.445 (1) (wh) *Unemployment information technology systems; assessments.*
15 ~~All~~ From the unemployment administration fund, all moneys received from
16 assessments levied under s. 108.19 (1e) (a) and ~~1997 Wisconsin Act 39, section 164~~
17 ~~(2)~~, for the purpose specified in s. 108.19 (1e) (d). The treasurer of the unemployment
18 reserve fund may transfer moneys from this appropriation account to the
19 appropriation account under par. ~~(gd)~~ (wd).

20 **SECTION 6.** 20.445 (1) (gm) of the statutes is repealed.

21 **SECTION 7.** 20.445 (1) (n) of the statutes is amended to read:

22 20.445 (1) (n) *Employment assistance and unemployment insurance*
23 *administration; federal moneys.* All federal moneys received, as authorized by the
24 governor under s. 16.54, for the administration of employment assistance and
25 unemployment insurance programs of the department, for the performance of the

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1 department's other functions under subch. I of ch. 106 and ch. 108, and to pay the
2 compensation and expenses of appeal tribunals and of employment councils
3 appointed under s. 108.14, to be used for such purposes, except as provided in s.
4 108.161 (3e), and, from the moneys received by this state under ~~section 903~~ 42 USC
5 1103 (d) of the federal Social Security Act, as amended, to transfer to the
6 appropriation account under par. (nb) an amount determined by the treasurer of the
7 unemployment reserve fund not exceeding the lesser of the amount specified in s.
8 108.161 (4) (d) or the amounts in the schedule under par. (nb), to transfer to the
9 appropriation account under par. (nd) an amount determined by the treasurer of the
10 unemployment reserve fund not exceeding the lesser of the amount specified in s.
11 108.161 (4) (d) or the amounts in the schedule under par. (nd), to transfer to the
12 appropriation account under par. (ne) an amount not exceeding the lesser of the
13 amount specified in s. 108.161 (4) (d) or the sum of the amounts in the schedule under
14 par. (ne) and the amount determined by the treasurer of the unemployment reserve
15 fund that is required to pay for the cost of banking services incurred by the
16 unemployment reserve fund, and to transfer to the appropriation account under s.
17 20.427 (1) (k) an amount determined by the treasurer of the unemployment reserve
18 fund.

19 **SECTION 8.** 20.445 (1) (nb) of the statutes is amended to read:

20 20.445 (1) (nb) *Unemployment administration; information technology*
21 *systems.* From the moneys received from the federal government under ~~section 903~~
22 42 USC 1103 (d) of the federal Social Security Act, as amended, as a continuing
23 appropriation, the amounts in the schedule, as authorized by the governor under s.
24 16.54, for the purpose specified in s. 108.19 (1e) (d). All moneys transferred from par.
25 (n) for this purpose shall be credited to this appropriation account. No moneys may

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1 be expended from this appropriation unless the treasurer of the unemployment
2 reserve fund determines that such expenditure is currently needed for the purpose
3 specified in s. 108.19 (1e) (d).

4 **SECTION 9.** 20.445 (1) (nd) of the statutes is amended to read:

5 20.445 (1) (nd) *Unemployment administration; apprenticeship and other*
6 *employment services.* From the moneys received from the federal government under
7 ~~section 903~~ 42 USC 1103 (d) of the federal Social Security Act, as amended, the
8 amounts in the schedule, as authorized by the governor under s. 16.54, to be used for
9 administration by the department of apprenticeship programs under subch. I of ch.
10 106 and for administration and service delivery of employment and workforce
11 information services, including the delivery of reemployment assistance services to
12 unemployment insurance claimants. All moneys transferred from par. (n) for this
13 purpose shall be credited to this appropriation account. No moneys may be expended
14 from this appropriation unless the treasurer of the unemployment reserve fund
15 determines that such expenditure is currently needed for the purposes specified in
16 this paragraph.

17 **SECTION 10.** 20.445 (1) (ne) of the statutes is amended to read:

18 20.445 (1) (ne) *Unemployment insurance administration and bank service*
19 *costs.* From the moneys received by this state under ~~section 903 of the federal Social~~
20 ~~Security Act, as amended~~ 42 USC 1103, all moneys transferred from the
21 appropriation account under par. (n) to be used for the administration of
22 unemployment insurance and for the payment of the cost of banking services
23 incurred by the unemployment reserve fund. No moneys may be expended from this
24 appropriation unless the treasurer of the unemployment reserve fund determines

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1 that such expenditure is currently needed for the purpose specified in this
2 paragraph.

3 **SECTION 11.** 20.445 (1) (u) of the statutes is amended to read:

4 20.445 (1) (u) *Unemployment interest payments and transfers.* From the
5 unemployment interest payment fund, all moneys received from assessments under
6 s. 108.19 (1m) (a) for the purpose of making the payments and transfers authorized
7 under s. 108.19 (1m) (f).

8 **SECTION 12.** 20.445 (1) (v) of the statutes is amended to read:

9 20.445 (1) (v) *Unemployment program integrity.* From the unemployment
10 program integrity fund, all moneys received from sources identified under s. ~~108.19~~
11 ~~(1s)~~ 108.20 (2) (a) for the purpose of making the payments authorized under s. ~~108.19~~
12 ~~(1s)~~ 108.20 (2) (b).

13 **SECTION 13.** 25.17 (1) (xe) of the statutes is amended to read:

14 25.17 (1) (xe) Unemployment interest payment fund (s. ~~108.19 (1q)~~ 108.20 (3));

15 **SECTION 14.** 25.17 (1) (xf) of the statutes is amended to read:

16 25.17 (1) (xf) Unemployment program integrity fund (s. ~~108.19 (1s)~~ 108.20 (2));

17 **SECTION 15.** 103.05 (5) (d) of the statutes is amended to read:

18 103.05 (5) (d) The department shall deposit all moneys received under this
19 subsection in the appropriation account under s. 20.445 (1) (~~gd~~) (wd).

20 **SECTION 16.** 108.02 (1) of the statutes is repealed.

21 **SECTION 17.** 108.04 (11) (f) of the statutes is amended to read:

22 108.04 (11) (f) All amounts forfeited under par. (c) and all collections from
23 administrative assessments under par. (cm) shall be credited to the administrative
24 account appropriation under s. 20.445 (1) (wd).

25 **SECTION 18.** 108.07 (5) (am) (intro.) of the statutes is amended to read:

SENATE BILL 899**SECTION 18**

1 108.07 (5) (am) (intro.) Except as provided in sub. (7), whenever benefits
2 which ~~that~~ would otherwise be chargeable to the fund's balancing account are paid
3 based on wages paid by an employer that is not subject to the contribution
4 requirements of ss. 108.17 and 108.18, and the benefits are so chargeable under
5 sub. (3) or s. 108.04 (1) (f) ~~or~~, (5), or (5g) or 108.14 (8n) (e), or under s. 108.16 (6m)
6 (e) for benefits specified in s. 108.16 (3) (b), the department shall charge the
7 benefits as follows:

8 **SECTION 19.** 108.07 (5) (am) 1. of the statutes is amended to read:

9 108.07 (5) (am) 1. If no employer from which the claimant has base period
10 wages is subject to the contribution requirements of ss. 108.17 and 108.18, the
11 benefits shall be ~~charged to the administrative account and~~ paid from the
12 appropriation under s. 20.445 (1) (gd) (wd).

13 **SECTION 20.** 108.07 (5) (am) 3. of the statutes is amended to read:

14 108.07 (5) (am) 3. If 2 or more employers from which the claimant has base
15 period wages are not subject to the contribution requirements of ss. 108.17 and
16 108.18, and one or more employers from which the claimant has base period wages
17 are subject to the contribution requirements of ss. 108.17 and 108.18, that
18 percentage of the employee's benefits which would otherwise be chargeable to the
19 fund's balancing account under sub. (3) or s. 108.04 (1) (f) ~~or~~, (5), or (5g), or under s.
20 108.16 (6m) (e) for benefits specified in s. 108.16 (3) (b), shall be ~~charged to the~~
21 ~~administrative account and~~ paid from the appropriation under s. 20.445 (1) (gd) (wd).

22 **SECTION 21.** 108.07 (6) of the statutes is amended to read:

23 108.07 (6) The department may initially charge benefits otherwise ~~chargeable~~
24 ~~to the administrative account payable from the appropriation under s. 20.445 (1)~~
25 (wd) as provided under this section to the fund's balancing account, and periodically

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1 reimburse the charges to the balancing account from the ~~administrative account~~
2 appropriation under s. 20.445 (1) (wd).

3 **SECTION 22.** 108.09 (5) (b) of the statutes is amended to read:

4 108.09 (5) (b) All testimony at any hearing under this section shall be recorded
5 by electronic means, but need not be transcribed unless either of the parties requests
6 a transcript before expiration of that party's right to further appeal under this
7 section and pays a fee to the commission in advance, the amount of which shall be
8 established by rule of the commission. When the commission provides a transcript
9 to one of the parties upon request, the commission shall also provide a copy of the
10 transcript to all other parties free of charge. The transcript fee collected shall be paid
11 ~~to the administrative account~~ credited to the appropriation account under s. 20.427
12 (1) (g).

13 **SECTION 23.** 108.14 (2m) of the statutes is amended to read:

14 108.14 (2m) In the discharge of their duties under this chapter an appeal
15 tribunal, commissioner, or other authorized representative of the department or
16 commission may administer oaths to persons appearing before them, take
17 depositions, certify to official acts, and by subpoenas, served in the manner in which
18 circuit court subpoenas are served, compel attendance of witnesses and the
19 production of books, papers, documents, and records necessary or convenient to be
20 used by them in connection with any investigation, hearing, or other proceeding
21 under this chapter. A party's attorney of record may issue a subpoena to compel the
22 attendance of a witness or the production of evidence. A subpoena issued by an
23 attorney must be in substantially the same form as provided in s. 805.07 (4) and must
24 be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of
25 issuance, send a copy of the subpoena to the appeal tribunal or other representative

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1 of the department responsible for conducting the proceeding. However, in any
2 investigation, hearing, or other proceeding involving the administration of oaths or
3 the use of subpoenas under this subsection due notice shall be given to any interested
4 party involved, who shall be given an opportunity to appear and be heard at any such
5 proceeding and to examine witnesses and otherwise participate therein. Witness
6 fees and travel expenses involved in proceedings under this chapter may be allowed
7 by the appeal tribunal or representative of the department at rates specified by
8 department rules, and shall be paid from the ~~administrative account~~ appropriation
9 under s. 20.445 (1) (n).

10 **SECTION 24.** 108.14 (3m) of the statutes is amended to read:

11 108.14 (3m) In any court action to enforce this chapter the department, the
12 commission, and the state may be represented by any licensed attorney who is an
13 employee of the department or the commission and is designated by either of them
14 for this purpose or at the request of either of them by the department of justice. If
15 the governor designates special counsel to defend, in behalf of the state, the validity
16 of this chapter or of any provision of ~~Title IX of the social security act~~ 42 USC 1101
17 to 1111, the expenses and compensation of the special counsel and of any experts
18 employed by the department in connection with that proceeding may be charged to
19 the ~~administrative account~~ appropriation under s. 20.445 (1) (wd). If the
20 compensation is being determined on a contingent fee basis, the contract is subject
21 to s. 20.9305.

22 **SECTION 25.** 108.14 (7) (c) of the statutes is repealed.

23 **SECTION 26.** 108.14 (12) (a) to (d) of the statutes are consolidated, renumbered
24 108.14 (12) (am) and amended to read:

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1 108.14 **(12)** (am) Consistently with the provisions of ~~pars. (8) and (9) of section~~
2 ~~303 (a) of Title III of the federal social security act, 42 USC 503 (a) (8) and (9), the~~
3 ~~department shall expend~~ all moneys received in the federal administrative financing
4 account from any federal agency under said Title III ~~shall be expended 42 USC ch.~~
5 ~~7 subch. III solely for the purposes and in the amounts found necessary by said that~~
6 ~~agency for the proper and efficient administration of this chapter. (b) Consistently~~
7 ~~with said provisions of said Title III, any~~ The department shall replace, within a
8 ~~reasonable time, any such moneys, that were received prior to before~~ July 1, 1941,
9 and ~~remaining~~ remained unencumbered on said ~~that~~ date, or ~~that were~~ received on
10 or after said ~~that~~ date, ~~which, because of any action or contingency, have been if the~~
11 moneys are lost or have been expended for purposes other than, or in amounts in
12 excess of, those found necessary by said the federal agency for the proper
13 administration of this chapter, ~~shall be replaced within a reasonable time. This~~
14 ~~paragraph is the declared policy of this state, as enunciated by the 1941 legislature,~~
15 and shall be implemented as further provided in this subsection. (c). If it is believed
16 that any amount of money thus received ~~has been thus~~ is lost or improperly
17 expended, the department, on its own motion or on notice from said the federal
18 agency, shall promptly investigate and determine the matter and shall, depending
19 on the nature of its determination, take such steps as it ~~may deem~~ considers
20 necessary to protect the interests of the state. (d) If it is finally determined that
21 moneys ~~thus received~~ have been ~~thus~~ lost or improperly expended, then the
22 department shall either make the necessary replacement from ~~those moneys in the~~
23 ~~administrative account specified in s. 108.20 (2m)~~ the appropriation under s. 20.445
24 (1) (wd) or shall submit, at the next budget hearings conducted by the governor and
25 at the budget hearings conducted by the next legislature convened in regular session,

SENATE BILL 899**SECTION 26**

1 a request that the necessary replacement be made by an appropriation from the
2 general fund.

3 **SECTION 27.** 108.14 (12) (e) of the statutes is renumbered 108.14 (12) (bm) and
4 amended to read:

5 108.14 (12) (bm) This subsection shall not be construed to relieve this state of
6 any obligation existing ~~prior to its enactment before July 1, 1941,~~ with respect to
7 moneys received ~~prior to before July 1, 1941, pursuant to said Title III under 42 USC~~
8 ch. 7 subch. III.

9 **SECTION 28.** 108.14 (16) of the statutes is amended to read:

10 108.14 (16) The department shall have duplicated or printed, ~~and shall~~
11 ~~distribute without charge, such employment security~~ any reports, studies and,
12 forms, records, decisions, regulations, rules, or other materials, including the text of
13 this chapter ~~and, the handbook under sub. (23), and other~~ instructional or
14 explanatory pamphlets for employers or workers, as that it deems necessary for
15 public information or for the proper administration of this chapter; ~~but the.~~ The
16 department may collect a reasonable charge, which shall be credited to the
17 administrative appropriation account under s. 20.445 (1) (wd), for any such item the
18 cost of which is not fully covered by federal administrative grants.

19 **SECTION 29.** 108.14 (18) of the statutes is renumbered 108.19 (1e) (e) and
20 amended to read:

21 108.19 (1e) (e) No later than the end of the month following each quarter in
22 which the department expends moneys derived from assessments levied under s.
23 ~~108.19 (1e)~~ this subsection, the department shall submit a report to the council on
24 unemployment insurance describing the use of the moneys expended and the status
25 at the end of the quarter of any project for which moneys were expended.

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1 **SECTION 30.** 108.14 (23) (d) of the statutes is repealed.

2 **SECTION 31.** 108.16 (5) (c) of the statutes is amended to read:

3 108.16 (5) (c) While the state has an account in the “Unemployment Trust
4 Fund”,” public deposit insurance charges on the fund’s balances held in banks,
5 savings banks, savings and loan associations, and credit unions in this state, the
6 premiums on surety bonds required of the fund’s treasurer under this section, and
7 any other expense of administration otherwise payable from the fund’s interest
8 earnings, shall be paid from the ~~administrative account~~ appropriation under s.
9 20.445 (1) (n) or (ne).

10 **SECTION 32.** 108.16 (6) (k) of the statutes is amended to read:

11 108.16 (6) (k) All payments to the fund from the ~~administrative account as~~
12 ~~authorized under s. 108.20 (2m)~~ appropriation under s. 20.445 (1) (wd).

13 **SECTION 33.** 108.16 (6) (m) of the statutes is amended to read:

14 108.16 (6) (m) Any amounts transferred to the balancing account from the
15 unemployment interest payment fund under s. 108.19 (1m) (f).

16 **SECTION 34.** 108.16 (8) (f) of the statutes is amended to read:

17 108.16 (8) (f) The successor shall take over and continue the transferor’s
18 account, including its positive or negative balance and all other aspects of its
19 experience under this chapter in proportion to the payroll assignable to the
20 transferred business and the liability of the successor shall be proportioned to the
21 extent of the transferred business. The transferor and the successor shall be jointly
22 and severally liable for any amounts owed by the transferor ~~to the fund and to the~~
23 ~~administrative account~~ under this chapter at the time of the transfer, but a successor
24 under par. (c) is not liable for the debts of the transferor except in the case of fraud
25 or malfeasance.

SENATE BILL 899**SECTION 35**

1 **SECTION 35.** 108.161 (title) of the statutes is amended to read:

2 **108.161 (title) Federal administrative financing account; Reed Act**
3 **distributions.**

4 **SECTION 36.** 108.161 (1) and (1m) of the statutes are consolidated, renumbered
5 108.161 (1) and amended to read:

6 108.161 (1) The fund's treasurer shall maintain within the fund an
7 employment security "federal administrative financing account", and shall credit
8 thereto to that account all amounts credited to the fund pursuant to the federal
9 employment security administrative financing act (of 1954) and section 903 of the
10 federal social security act, as amended. ~~(1m) The treasurer of the fund shall also~~
11 ~~credit to said account~~ under 42 USC 1101 to 1103 and all federal moneys credited to
12 the fund pursuant to under sub. (8).

13 **SECTION 37.** 108.161 (2) of the statutes is amended to read:

14 108.161 (2) The requirements of ~~said section 903~~ 42 USC 1103 shall control any
15 appropriation, withdrawal, and use of any moneys in said the federal administrative
16 financing account.

17 **SECTION 38.** 108.161 (3) of the statutes is amended to read:

18 108.161 (3) Consistently with this chapter and ~~said section 903~~, such 42 USC
19 1103, moneys in the federal administrative financing account shall be used solely for
20 benefits or employment security administration by the department, including
21 unemployment insurance, employment service, apprenticeship programs, and
22 related statistical operations.

23 **SECTION 39.** 108.161 (3e) of the statutes is amended to read:

24 108.161 (3e) Notwithstanding sub. (3), any moneys allocated under ~~section 903~~
25 ~~of the federal Social Security Act, as amended,~~ 42 USC 1103 for federal fiscal years

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1 2000 and 2001 and the first \$2,389,107 of any distribution received by this state
2 under ~~section 903 of that act~~ 42 USC 1103 in federal fiscal year 2002 shall be used
3 solely for unemployment insurance administration.

4 **SECTION 40.** 108.161 (4) of the statutes is amended to read:

5 108.161 (4) ~~Such moneys~~ Moneys in the federal administrative financing
6 account shall be encumbered and spent for employment security administrative
7 purposes only pursuant to, and after the effective date of, a specific legislative
8 appropriation enactment that does all of the following:

9 (a) ~~Stating States~~ for which such purposes and in what amounts the
10 appropriation is being made ~~to the administrative account created by s. 108.20.~~

11 (b) ~~Directing Directs~~ the fund's treasurer to transfer the appropriated amounts
12 ~~to the administrative account~~ the appropriation account under s. 20.445 (1) (n) only
13 as and to the extent that they are currently needed for such expenditures, and
14 ~~directing directs~~ that there shall be restored to the federal administrative financing
15 ~~account created by sub. (1)~~ any amount thus transferred ~~which~~ that has ceased to be
16 needed or available for such expenditures.

17 (c) ~~Specifying Specifies~~ that the appropriated amounts are available for
18 obligation solely within the 2 years beginning on the appropriation law's date of
19 enactment. This paragraph does not apply to the appropriations under s. 20.445 (1)
20 (nd) and (ne) or to any amounts expended from the appropriation under s. 20.445 (1)
21 (nb) from moneys transferred to this state on March 13, 2002, pursuant to ~~section 903~~
22 ~~(d) of the federal Social Security Act~~ 42 USC 1103 (d).

23 (d) ~~Limiting Limits~~ the total amount ~~which~~ that may be obligated during any
24 fiscal year to the aggregate of all amounts credited under sub. (1), including amounts

SENATE BILL 899**SECTION 40**

1 credited pursuant to under sub. (8), reduced at the time of any obligation by the sum
2 of the moneys obligated and charged against any of the amounts credited.

3 **SECTION 41.** 108.161 (5) and (6) of the statutes are consolidated, renumbered
4 108.161 (5m) and amended to read:

5 108.161 **(5m)** The total of the amounts ~~thus~~ appropriated under sub. (4) for use
6 in any fiscal year shall in no event exceed the moneys available for such use
7 ~~hereunder~~ under this section, considering the timing of credits ~~hereunder~~ under this
8 section and the sums already spent or appropriated or transferred or otherwise
9 encumbered ~~hereunder. (6) under this section.~~ The fund's treasurer shall keep a
10 record of all such ~~times and amounts; shall charge transactions and shall do all of the~~
11 following:

12 (a) Charge each sum against the earliest credits ~~duly~~ available therefor; ~~shall~~
13 ~~include.~~

14 (b) Include any sum ~~thus~~ that has been appropriated but not yet spent
15 ~~hereunder~~ under this section in computing the fund's net balance as of the close of
16 any month, in line with the federal requirement that any such sum shall, until spent,
17 be considered part of the fund; ~~and shall certify.~~

18 (c) Certify the relevant facts whenever necessary ~~hereunder.~~

19 **SECTION 42.** 108.161 (7) of the statutes is amended to read:

20 108.161 **(7)** If any moneys appropriated ~~hereunder~~ under this section are used
21 to buy and hold suitable land, ~~with a view to the future construction of an~~ and to build
22 a suitable employment security building thereon, and if such land is later sold or
23 transferred to other use, the proceeds of such sale (~~or the value of such land when~~
24 transferred), shall be credited to the federal administrative financing account
25 ~~created by sub. (1)~~ except as otherwise provided in ss. 13.48 (14) and 16.848.

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1 **SECTION 43.** 108.161 (8) of the statutes is amended to read:

2 108.161 (8) If any sums are appropriated and spent hereunder under this
3 section to buy land and to build a suitable employment security building thereon, or
4 to purchase information technology hardware and software, ~~then~~ any federal
5 moneys thereafter credited to the fund or paid to the department by way of gradual
6 reimbursement of such employment security capital expenditures, or in lieu of the
7 estimated periodic amounts ~~which~~ that would otherwise (, in the absence of such
8 expenditures), be federally granted for the rental of substantially equivalent
9 quarters, shall be credited to the federal administrative financing account ~~created~~
10 ~~by sub. (1)~~, consistently with any federal requirements applicable to the handling
11 and crediting of such moneys.

12 **SECTION 44.** 108.161 (9) of the statutes is amended to read:

13 108.161 (9) Any land and building or office quarters acquired under this section
14 shall continue to be used for employment security purposes. Realty or quarters may
15 not be sold or transferred to other use if prior action is taken under s. 13.48 (14) (am)
16 or 16.848 (1) and may not be sold or transferred without the governor's approval. The
17 proceeds from the sale, or the value of realty or quarters upon transfer, shall be
18 credited to the federal administrative financing account ~~established in sub. (1)~~ or
19 credited to the ~~fund established in s. 108.20~~ appropriate appropriation account
20 under s. 20.445, or both as determined by the department in accordance with federal
21 requirements. Equivalent substitute rent-free quarters may be provided, as
22 federally approved. Amounts credited under this subsection shall be used solely to
23 finance employment security quarters according to federal requirements.

24 **SECTION 45.** 108.162 (7) of the statutes is amended to read:

SENATE BILL 899**SECTION 45**

1 108.162 (7) Any amount appropriated under s. 20.445 (1) (na) ~~which~~ that has
2 not been obligated shall be available for employment security local office building
3 projects, consistent with this section and ~~ss. s. 108.161 and 108.20.~~

4 **SECTION 46.** 108.17 (2m) of the statutes is amended to read:

5 108.17 (2m) When a written statement of account is issued to an employer by
6 the department, ~~showing as duly credited~~ that shows a specified amount received
7 from the employer under this chapter as having been credited, no other form of state
8 receipt ~~therefor~~ is required.

9 **SECTION 47.** 108.17 (3) of the statutes is amended to read:

10 108.17 (3) If an employing unit ~~makes application~~ applies to the department
11 to adjust an alleged overpayment by the employer of contributions or interest under
12 this chapter, and files such an application within 3 years after the close of the
13 calendar year in which such payment was made, the department shall ~~make a~~
14 ~~determination~~ determine under s. 108.10 ~~as to the existence and whether and to~~
15 ~~what~~ extent of any such an overpayment, and said section shall apply to such
16 ~~determination~~ exists. Except as provided in sub. (3m), the department shall allow
17 an employer a credit for any amount determined under s. 108.10 to have been
18 erroneously paid by the employer, without interest, against its future contribution
19 payments; or, if the department finds it impracticable to allow the employer such a
20 credit, it shall refund ~~such~~ the overpayment to the employer, without interest, from
21 the fund or the ~~administrative account, as the case may be~~ appropriate appropriation
22 under s. 20.445.

23 **SECTION 48.** 108.17 (3m) of the statutes is amended to read:

24 108.17 (3m) If an appeal tribunal or the commission issues a decision under
25 s. 108.10 (2), or a court issues a decision on review under s. 108.10 (4), in which it is

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1 determined that an amount has been erroneously paid by an employer, the
2 department shall, from the ~~administrative account~~ appropriation under s. 20.445 (1)
3 (wd), credit the employer with interest at the rate of 0.75 percent per month or
4 fraction thereof on the amount of the erroneous payment. Interest shall accrue from
5 the month which the erroneous payment was made until the month in which it is
6 either used as a credit against future contributions or refunded to the employer.

7 **SECTION 49.** 108.18 (7) (a) 1. of the statutes is amended to read:

8 108.18 (7) (a) 1. Except as provided in pars. (b) to (i), any employer may make
9 payments to the fund during the month of November in excess of those required by
10 this section and s. 108.19 (1), ~~(1e)~~, and ~~(1f)~~. Each payment shall be credited to the
11 employer's account for the purpose of computing the employer's reserve percentage
12 as of the immediately preceding computation date.

13 **SECTION 50.** 108.18 (7) (h) of the statutes is amended to read:

14 108.18 (7) (h) The department shall establish contributions, other than those
15 contributions required by this section and assessments required under s. 108.19 (1),
16 ~~(1e)~~, and ~~(1f)~~ and contributions other than those submitted during the month of
17 November or authorized under par. (f) or (i) 2., as a credit, without interest, against
18 future contributions payable by the employer or shall refund the contributions at the
19 employer's option.

20 **SECTION 51.** 108.19 (title) of the statutes is repealed and recreated to read:

21 **108.19 (title) Special assessments.**

22 **SECTION 52.** 108.19 (1) of the statutes is renumbered 108.19 (1) (a) and
23 amended to read:

24 108.19 (1) (a) Each employer subject to this chapter shall regularly ~~contribute~~
25 ~~to the administrative account at the rate of two-tenths of one~~ pay an assessment

SENATE BILL 899**SECTION 52**

1 equal to 0.2 percent per year on its payroll, except that the department may prescribe
2 at the close of any fiscal year such lower rates ~~of contribution~~ under this section
3 subsection, to apply to classes of employers throughout the ensuing fiscal year, as will
4 in the department's judgment adequately finance the administration of this chapter,
5 and as will in the department's judgment fairly represent the relative cost of the
6 services rendered by the department to each such class.

7 **SECTION 53.** 108.19 (1) (d) of the statutes is created to read:

8 108.19 (1) (d) Assessments under this subsection shall be credited to the
9 appropriation account under s. 20.445 (1) (wc).

10 **SECTION 54.** 108.19 (1e) (a) of the statutes is amended to read:

11 108.19 (1e) (a) Except as provided in par. (b), each employer, other than an
12 employer that finances benefits by reimbursement in lieu of contributions under s.
13 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable
14 under s. 108.18 and this section, pay an assessment ~~to the administrative account~~
15 for each year ~~prior to~~ before the year 2010 equal to the lesser of 0.01 percent of its
16 payroll for that year or the solvency contribution that would otherwise be payable
17 by the employer under s. 108.18 (9) for that year.

18 **SECTION 55.** 108.19 (1e) (cm) of the statutes is created to read:

19 108.19 (1e) (cm) Assessments under this subsection shall be credited to the
20 appropriation under s. 20.445 (1) (wh).

21 **SECTION 56.** 108.19 (1e) (d) of the statutes is amended to read:

22 108.19 (1e) (d) The department may expend the moneys received from
23 assessments levied under this subsection in the amounts authorized under s. 20.445
24 (1) ~~(gh)~~ (wh) for the renovation and modernization of unemployment insurance
25 information technology systems, specifically including development and

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1 implementation of a new system and reengineering of automated processes and
2 manual business functions.

3 **SECTION 57.** 108.19 (1f) (a) of the statutes is amended to read:

4 108.19 (1f) (a) Except as provided in par. (b), each employer, other than an
5 employer that finances benefits by reimbursement in lieu of contributions under s.
6 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable
7 under s. 108.18 and this section, pay an assessment for each year equal to the lesser
8 of 0.01 percent of its payroll for that year or the solvency contribution that would
9 otherwise be payable by the employer under s. 108.18 (9) for that year.

10 (d) Assessments under this ~~paragraph~~ subsection shall be deposited in the
11 unemployment program integrity fund.

12 **SECTION 58.** 108.19 (1f) (c) of the statutes is amended to read:

13 108.19 (1f) (c) Notwithstanding par. (a), the department may, if it finds that the
14 full amount of the levy is not required to effect the purposes specified in ~~sub. (1s) s.~~
15 108.20 (2) (b) for any year, prescribe a reduced levy for that year and in such case shall
16 publish in the notice under par. (b) the rate of the reduced levy.

17 **SECTION 59.** 108.19 (1m) of the statutes is renumbered 108.19 (1m) (a) and
18 amended to read:

19 108.19 (1m) (a) Each employer subject to this chapter as of the date a rate is
20 established under this subsection shall pay an assessment ~~to the unemployment~~
21 ~~interest payment fund~~ at a rate established by the department sufficient to pay
22 interest due on advances from the federal unemployment account under ~~Title XII of~~
23 ~~the federal social security act~~, 42 USC 1321 to 1324. The rate established by the
24 department for employers who finance benefits under s. 108.15 (2), 108.151 (2), or
25 108.152 (1) shall be 75 percent of the rate established for other employers. The

SENATE BILL 899**SECTION 59**

1 amount of any employer's assessment shall be the product of the rate established for
2 that employer multiplied by the employer's payroll of the previous calendar year as
3 taken from quarterly employment and wage reports filed by the employer under s.
4 108.205 (1) or, in the absence of the filing of such reports, estimates made by the
5 department.

6 (d) Each assessment made under this subsection is due within 30 days after the
7 date the department issues the assessment. ~~If the~~

8 (f) The department shall use amounts collected from employers under this
9 subsection ~~exceed the amounts needed to pay interest due on advances from the~~
10 federal unemployment account under 42 USC 1321 to 1324. If the amounts collected
11 exceed the amounts needed to pay that interest for a given year, the department shall
12 use any the excess to pay interest owed in subsequent years on advances from the
13 federal unemployment account. If the department determines that additional
14 interest obligations are unlikely, the department shall transfer the excess to the
15 fund's balancing account ~~of the fund~~, the unemployment program integrity fund, or
16 both in amounts determined by the department.

17 **SECTION 60.** 108.19 (1m) (e) of the statutes is created to read:

18 108.19 **(1m)** (e) Assessments under this subsection shall be deposited in the
19 unemployment interest payment fund.

20 **SECTION 61.** 108.19 (1n) of the statutes is renumbered 108.19 (1m) (b) and
21 amended to read:

22 108.19 **(1m)** (b) The department shall publish as a class 1 notice under ch. 985
23 any rate established under ~~sub. (1m)~~ par. (a) within 10 days of after the date that the
24 rate is established.

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1 **SECTION 62.** 108.19 (1p) of the statutes is renumbered 108.19 (1m) (c) and
2 amended to read:

3 108.19 **(1m)** (c) Notwithstanding ~~sub. (1m) par. (a)~~, an employer having a
4 payroll of \$25,000 or less for the preceding calendar year is exempt from any
5 assessment under ~~sub. (1m)~~ this subsection.

6 **SECTION 63.** 108.19 (1q) of the statutes is renumbered 108.20 (3) and amended
7 to read:

8 108.20 **(3)** UNEMPLOYMENT INTEREST PAYMENT FUND. There is created a separate,
9 nonlapsible trust fund designated as the unemployment interest payment fund
10 consisting of all amounts collected under ~~sub. s. 108.19~~ (1m) (a) and all interest and
11 penalties on those amounts collected under s. 108.22.

12 **SECTION 64.** 108.19 (1s) of the statutes is renumbered 108.20 (2), and 108.20
13 (2) (a) 2. and 3., as renumbered, are amended to read:

14 108.20 **(2)** (a) 2. Assessments levied and deposited into the unemployment
15 program integrity fund under ~~sub. (1f)~~ s. 108.19 (1f).

16 3. Amounts transferred under ~~sub. (1m)~~ s. 108.19 (1m) (f).

17 **SECTION 65.** 108.19 (2) of the statutes is renumbered 108.19 (1) (b) and
18 amended to read:

19 108.19 **(1)** (b) If the department finds, at any time within a fiscal year for which
20 it has prescribed lower contribution rates to the administrative account than the
21 maximum rate permitted under ~~sub. (1) par. (a)~~, that such lower rates will not
22 adequately finance the administration of this chapter or are excessive for that
23 purpose, the department may by general rule prescribe a new schedule of rates in no
24 case exceeding the specified maximum to apply under this section subsection for the
25 balance of the fiscal year.

SENATE BILL 899**SECTION 66**

1 **SECTION 66.** 108.19 (2m) of the statutes is renumbered 108.19 (1) (c) and
2 amended to read:

3 108.19 (1) (c) Within the limit specified by ~~sub. (1)~~ under par. (a), the
4 department may by rule prescribe at any time as to any period any such rate or rates
5 or schedule as it deems necessary and proper ~~hereunder~~ under this subsection.
6 Unless thus prescribed, no such rate or rates or schedule shall apply under ~~sub. (1)~~
7 ~~or (2)~~ par. (a) or (b).

8 **SECTION 67.** 108.19 (4) of the statutes is renumbered 108.18 (1) (c) and
9 amended to read:

10 108.18 (1) (c) ~~If section 303 Notwithstanding par. (b), if 42 USC 503 (a) (5) of~~
11 ~~title III of the social security act and section 26 USC 3304 (a) (4) of the internal~~
12 ~~revenue code are amended to permit a state agency to use, in financing~~
13 ~~administrative expenditures incurred in carrying out its employment security~~
14 ~~functions, some any part of the moneys collected or to be collected under the state~~
15 ~~unemployment insurance law, an employer's contributions in partial or complete~~
16 ~~substitution for grants under title III 42 USC 501 to 506, then this chapter shall, by~~
17 ~~rule of the department, be modified in the manner and to the extent and within the~~
18 ~~limits necessary to permit such use by the department under this chapter; and the~~
19 ~~modifications shall become effective on the same date as such use becomes~~
20 ~~permissible under the federal amendments~~ the department may credit any portion
21 of that part of an employer's contributions to the appropriation under s. 20.445 (1)
22 (wd).

23 **SECTION 68.** 108.20 of the statutes is repealed and recreated to read:

24 **108.20 Segregated funds. (1) UNEMPLOYMENT ADMINISTRATION FUND.** There
25 is created a separate, nonlapsible trust fund designated as the unemployment

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1 administration fund consisting of moneys credited to the appropriation accounts
2 under s. 20.445 (1) (wc), (wd), and (wh).

3 **(2) UNEMPLOYMENT PROGRAM INTEGRITY FUND.**

4 **SECTION 69.** 108.22 (1) (am) of the statutes is amended to read:

5 108.22 **(1)** (am) The interest, penalties, and tardy filing fees levied under pars.
6 (a), (ac), (ad), and (af) shall be paid to the department and credited to the
7 administrative account appropriation under s. 20.445 (1) (wd).

8 **SECTION 70.** 108.22 (1m) of the statutes is amended to read:

9 108.22 **(1m)** If any person owes any contributions, reimbursements or
10 assessments under s. 108.15, 108.151, 108.152, 108.155, or 108.19 ~~(1m)~~, benefit
11 overpayments, interest, fees, payments for forfeitures, other penalties, or any other
12 amount to the department under this chapter and fails to pay the amount owed, the
13 department has a perfected lien upon the right, title, and interest in all of the
14 person's real and personal property located in this state in the amount finally
15 determined to be owed, plus costs. Except where creation of a lien is barred or stayed
16 by bankruptcy or other insolvency law, the lien is effective upon the earlier of the date
17 on which the amount is first due or the date on which the department issues a
18 determination of the amount owed under this chapter and shall continue until the
19 amount owed, plus costs and interest to the date of payment, is paid, except as
20 provided in sub. (8) (d). If a lien is initially barred or stayed by bankruptcy or other
21 insolvency law, it shall become effective immediately upon expiration or removal of
22 such bar or stay. The perfected lien does not give the department priority over
23 lienholders, mortgagees, purchasers for value, judgment creditors, and pledges
24 whose interests have been recorded before the department's lien is recorded.

25 **SECTION 71. Fiscal changes.**



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-2897/P1
MED:skw

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 20.445 (1) (gg), 20.445 (1) (gm), 108.02 (1), 108.14 (7) (c) and
2 108.14 (23) (d); **to renumber and amend** 20.445 (1) (gc), 20.445 (1) (gd), 20.445
3 (1) (gh), 108.14 (12) (e), 108.14 (18), 108.19 (1), 108.19 (1m), 108.19 (1n), 108.19
4 (1p), 108.19 (1q), 108.19 (1s), 108.19 (2), 108.19 (2m) and 108.19 (4); **to**
5 **consolidate, renumber and amend** 108.14 (12) (a) to (d), 108.161 (1) and
6 (1m) and 108.161 (5) and (6); **to amend** 20.445 (1) (n), 20.445 (1) (nb), 20.445
7 (1) (nd), 20.445 (1) (ne), 20.445 (1) (u), 20.445 (1) (v), 25.17 (1) (xe), 25.17 (1) (xf),
8 103.05 (5) (d), 108.04 (11) (f), 108.07 (5) (am) (intro.), 108.07 (5) (am) 1., 108.07
9 (5) (am) 3., 108.07 (6), 108.09 (5) (b), 108.14 (2m), 108.14 (3m), 108.14 (16),
10 108.16 (5) (c), 108.16 (6) (k), 108.16 (6) (m), 108.16 (8) (f), 108.161 (title), 108.161
11 (2), 108.161 (3), 108.161 (3e), 108.161 (4), 108.161 (7), 108.161 (8), 108.161 (9),
12 108.162 (7), 108.17 (2m), 108.17 (3), 108.17 (3m), 108.18 (7) (a) 1., 108.18 (7) (h),
13 108.19 (1e) (a), 108.19 (1e) (d), 108.19 (1f) (a), 108.19 (1f) (c), 108.22 (1) (am) and
14 108.22 (1m); **to repeal and recreate** 108.19 (title) and 108.20; and **to create**
15 20.427 (1) (g), 108.19 (1) (d), 108.19 (1e) (cm) and 108.19 (1m) (e) of the statutes;

1 **relating to:** various changes to the unemployment insurance law and making
2 an appropriation.

Analysis by the Legislative Reference Bureau

This bill makes various changes in the unemployment insurance (UI) law, which is administered by the Department of Workforce Development. Significant changes include all of the following:

Segregated fund

The bill creates a segregated fund to receive various program revenue moneys received by DWD under the UI law that are not otherwise credited to other segregated funds, including various moneys collected by DWD as interest and penalties under the UI law and all other nonfederal moneys received for the administration of the UI law that are not otherwise appropriated. Current law provides for depositing these revenues in appropriations in the general fund.

Other changes

The bill makes various changes to a) reorganize, clarify, and update provisions relating to the financing of the UI law; and b) address numerous out-of-date or erroneous cross-references in the UI law, including all of the following:

1. Repealing and consolidating certain appropriations and making other changes to clarify the funding sources and receiving appropriations for various revenues and expenses under the UI law.
2. Creating a program revenue appropriation for the Labor and Industry Review Commission to collect moneys received for the copying and generation of documents and for other services provided in carrying out its functions.
3. Deleting obsolete references to state laws.
4. Correcting various cross-references that are otherwise incomplete or erroneous.
5. Replacing certain references to provisions in federal acts or to the Internal Revenue Code with references to the U.S. Code in order to facilitate accessibility to federal law.
6. Making other nonsubstantive changes to the UI law to improve organization, modernize language, and provide further clarity, specificity, and consistency in the law.

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

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

3 **SECTION 1.** 20.427 (1) (g) of the statutes is created to read:

1 20.427 (1) (g) *Agency collections.* All moneys received from fees or other
2 charges for copying of documents, generation of copies of documents from optical disc
3 or electronic storage, publication of books, and other services provided in carrying
4 out the functions of the labor and industry review commission.

5 **SECTION 2.** 20.445 (1) (gc) of the statutes is renumbered 20.445 (1) (wc) and
6 amended to read:

7 20.445 (1) (wc) *Unemployment administration.* All From the unemployment
8 administration fund, all moneys received by the department under s. 108.19 ~~not~~
9 ~~otherwise appropriated under this subsection (1)~~ for the administration of ch. 108.

10 **SECTION 3.** 20.445 (1) (gd) of the statutes is renumbered 20.445 (1) (wd) and
11 amended to read:

12 20.445 (1) (wd) *Unemployment interest and penalty payments.* All From the
13 unemployment administration fund, all moneys received as interest and penalties
14 collected under ss. 108.04 (11) (c) and (cm) ~~and (13) (e)~~ and 108.22 except interest and
15 penalties deposited under s. 108.19 (1q), ~~and forfeitures under s. 103.05 (5), all~~
16 ~~moneys not appropriated under par. (gg) and 108.20 (3), all moneys received as~~
17 forfeitures under s. 103.05 (5), all moneys received under s. 108.09 (5) (c), all moneys
18 received under s. 108.14 (16), all moneys received under s. 108.18 (1) (c), all moneys
19 transferred to this appropriation account from the appropriation account under par.
20 ~~(gh) (wh), and all other nonfederal moneys received for the employment service or~~
21 for the administration of ch. 108 that are not otherwise appropriated under this
22 subsection, for the payment of benefits specified in s. 108.07 (5) and 1987 Wisconsin
23 Act 38, section 132 (1) (e), for the payment of interest to employers under s. 108.17
24 (3m), for research relating to the condition of the unemployment reserve fund under
25 s. 108.14 (6), for administration of the unemployment insurance program and federal

1 or state unemployment insurance programs authorized by the governor under s.
2 16.54, for satisfaction of any federal audit exception concerning a payment from the
3 unemployment reserve fund or any federal aid disallowance concerning the
4 unemployment insurance program, for assistance to the department of justice in the
5 enforcement of ch. 108, for the payment of interest due on advances from the federal
6 unemployment account under ~~title XII of the social security act~~ 42 USC 1321 to 1324
7 to the unemployment reserve fund, and for payments made to the unemployment
8 reserve fund to obtain a lower interest rate or deferral of interest payments on these
9 advances, ~~except as otherwise provided in s. 108.20.~~

10 **SECTION 4.** 20.445 (1) (gg) of the statutes is repealed.

11 **SECTION 5.** 20.445 (1) (gh) of the statutes is renumbered 20.445 (1) (wh) and
12 amended to read:

13 20.445 (1) (wh) *Unemployment information technology systems; assessments.*
14 ~~All~~ From the unemployment administration fund, all moneys received from
15 assessments levied under s. 108.19 (1e) (a) and ~~1997 Wisconsin Act 39, section 164~~
16 ~~(2)~~, for the purpose specified in s. 108.19 (1e) (d). The treasurer of the unemployment
17 reserve fund may transfer moneys from this appropriation account to the
18 appropriation account under par. ~~(gd)~~ (wd).

19 **SECTION 6.** 20.445 (1) (gm) of the statutes is repealed.

20 **SECTION 7.** 20.445 (1) (n) of the statutes is amended to read:

21 20.445 (1) (n) *Employment assistance and unemployment insurance*
22 *administration; federal moneys.* All federal moneys received, as authorized by the
23 governor under s. 16.54, for the administration of employment assistance and
24 unemployment insurance programs of the department, for the performance of the
25 department's other functions under subch. I of ch. 106 and ch. 108, and to pay the

1 compensation and expenses of appeal tribunals and of employment councils
2 appointed under s. 108.14, to be used for such purposes, except as provided in s.
3 108.161 (3e), and, from the moneys received by this state under ~~section 903~~ 42 USC
4 1103 (d) of the federal Social Security Act, as amended, to transfer to the
5 appropriation account under par. (nb) an amount determined by the treasurer of the
6 unemployment reserve fund not exceeding the lesser of the amount specified in s.
7 108.161 (4) (d) or the amounts in the schedule under par. (nb), to transfer to the
8 appropriation account under par. (nd) an amount determined by the treasurer of the
9 unemployment reserve fund not exceeding the lesser of the amount specified in s.
10 108.161 (4) (d) or the amounts in the schedule under par. (nd), to transfer to the
11 appropriation account under par. (ne) an amount not exceeding the lesser of the
12 amount specified in s. 108.161 (4) (d) or the sum of the amounts in the schedule under
13 par. (ne) and the amount determined by the treasurer of the unemployment reserve
14 fund that is required to pay for the cost of banking services incurred by the
15 unemployment reserve fund, and to transfer to the appropriation account under s.
16 20.427 (1) (k) an amount determined by the treasurer of the unemployment reserve
17 fund.

18 **SECTION 8.** 20.445 (1) (nb) of the statutes is amended to read:

19 20.445 (1) (nb) *Unemployment administration; information technology*
20 *systems.* From the moneys received from the federal government under ~~section 903~~
21 42 USC 1103 (d) of the federal Social Security Act, as amended, as a continuing
22 appropriation, the amounts in the schedule, as authorized by the governor under s.
23 16.54, for the purpose specified in s. 108.19 (1e) (d). All moneys transferred from par.
24 (n) for this purpose shall be credited to this appropriation account. No moneys may
25 be expended from this appropriation unless the treasurer of the unemployment

1 reserve fund determines that such expenditure is currently needed for the purpose
2 specified in s. 108.19 (1e) (d).

3 **SECTION 9.** 20.445 (1) (nd) of the statutes is amended to read:

4 20.445 (1) (nd) *Unemployment administration; apprenticeship and other*
5 *employment services.* From the moneys received from the federal government under
6 ~~section 903~~ 42 USC 1103 (d) ~~of the federal Social Security Act, as amended,~~ the
7 amounts in the schedule, as authorized by the governor under s. 16.54, to be used for
8 administration by the department of apprenticeship programs under subch. I of ch.
9 106 and for administration and service delivery of employment and workforce
10 information services, including the delivery of reemployment assistance services to
11 unemployment insurance claimants. All moneys transferred from par. (n) for this
12 purpose shall be credited to this appropriation account. No moneys may be expended
13 from this appropriation unless the treasurer of the unemployment reserve fund
14 determines that such expenditure is currently needed for the purposes specified in
15 this paragraph.

16 **SECTION 10.** 20.445 (1) (ne) of the statutes is amended to read:

17 20.445 (1) (ne) *Unemployment insurance administration and bank service*
18 *costs.* From the moneys received by this state under ~~section 903 of the federal Social~~
19 ~~Security Act, as amended~~ 42 USC 1103, all moneys transferred from the
20 appropriation account under par. (n) to be used for the administration of
21 unemployment insurance and for the payment of the cost of banking services
22 incurred by the unemployment reserve fund. No moneys may be expended from this
23 appropriation unless the treasurer of the unemployment reserve fund determines
24 that such expenditure is currently needed for the purpose specified in this
25 paragraph.

1 **SECTION 11.** 20.445 (1) (u) of the statutes is amended to read:

2 20.445 (1) (u) *Unemployment interest payments and transfers.* From the
3 unemployment interest payment fund, all moneys received from assessments under
4 s. 108.19 (1m) (a) for the purpose of making the payments and transfers authorized
5 under s. 108.19 (1m) (f).

6 **SECTION 12.** 20.445 (1) (v) of the statutes is amended to read:

7 20.445 (1) (v) *Unemployment program integrity.* From the unemployment
8 program integrity fund, all moneys received from sources identified under s. ~~108.19~~
9 ~~(1s) 108.20 (2)~~ (a) for the purpose of making the payments authorized under s. ~~108.19~~
10 ~~(1s) 108.20 (2)~~ (b).

11 **SECTION 13.** 25.17 (1) (xe) of the statutes is amended to read:

12 25.17 (1) (xe) Unemployment interest payment fund (s. ~~108.19 (1q)~~ 108.20 (3));

13 **SECTION 14.** 25.17 (1) (xf) of the statutes is amended to read:

14 25.17 (1) (xf) Unemployment program integrity fund (s. ~~108.19 (1s)~~ 108.20 (2));

15 **SECTION 15.** 103.05 (5) (d) of the statutes is amended to read:

16 103.05 (5) (d) The department shall deposit all moneys received under this
17 subsection in the appropriation account under s. 20.445 (1) (~~gd~~) (wd).

18 **SECTION 16.** 108.02 (1) of the statutes is repealed.

19 **SECTION 17.** 108.04 (11) (f) of the statutes is amended to read:

20 108.04 (11) (f) All amounts forfeited under par. (c) and all collections from
21 administrative assessments under par. (cm) shall be credited to the administrative
22 account appropriation under s. 20.445 (1) (wd).

23 **SECTION 18.** 108.07 (5) (am) (intro.) of the statutes is amended to read:

24 108.07 (5) (am) (intro.) Except as provided in sub. (7), whenever benefits
25 ~~which~~ that would otherwise be chargeable to the fund's balancing account are paid

1 based on wages paid by an employer that is not subject to the contribution
2 requirements of ss. 108.17 and 108.18, and the benefits are so chargeable under
3 sub. (3) or s. 108.04 (1) (f) ~~or, (5), or (5g)~~ or 108.14 (8n) (e), or under s. 108.16 (6m)
4 (e) for benefits specified in s. 108.16 (3) (b), the department shall charge the
5 benefits as follows:

6 **SECTION 19.** 108.07 (5) (am) 1. of the statutes is amended to read:

7 108.07 (5) (am) 1. If no employer from which the claimant has base period
8 wages is subject to the contribution requirements of ss. 108.17 and 108.18, the
9 benefits shall be ~~charged to the administrative account and~~ paid from the
10 appropriation under s. 20.445 (1) ~~(gd)~~ (wd).

11 **SECTION 20.** 108.07 (5) (am) 3. of the statutes is amended to read:

12 108.07 (5) (am) 3. If 2 or more employers from which the claimant has base
13 period wages are not subject to the contribution requirements of ss. 108.17 and
14 108.18, and one or more employers from which the claimant has base period wages
15 are subject to the contribution requirements of ss. 108.17 and 108.18, that
16 percentage of the employee's benefits which would otherwise be chargeable to the
17 fund's balancing account under sub. (3) or s. 108.04 (1) (f) ~~or, (5), or (5g)~~, or under s.
18 108.16 (6m) (e) for benefits specified in s. 108.16 (3) (b), shall be ~~charged to the~~
19 ~~administrative account and~~ paid from the appropriation under s. 20.445 (1) ~~(gd)~~ (wd).

20 **SECTION 21.** 108.07 (6) of the statutes is amended to read:

21 108.07 (6) The department may initially charge benefits otherwise chargeable
22 ~~to the administrative account~~ payable from the appropriation under s. 20.445 (1)
23 (wd) as provided under this section to the fund's balancing account, and periodically
24 reimburse the charges to the balancing account from the ~~administrative account~~
25 appropriation under s. 20.445 (1) (wd).

1 **SECTION 22.** 108.09 (5) (b) of the statutes is amended to read:

2 108.09 (5) (b) All testimony at any hearing under this section shall be recorded
3 by electronic means, but need not be transcribed unless either of the parties requests
4 a transcript before expiration of that party's right to further appeal under this
5 section and pays a fee to the commission in advance, the amount of which shall be
6 established by rule of the commission. When the commission provides a transcript
7 to one of the parties upon request, the commission shall also provide a copy of the
8 transcript to all other parties free of charge. The transcript fee collected shall be paid
9 ~~to the administrative account~~ credited to the appropriation account under s. 20.427
10 (1) (g).

11 **SECTION 23.** 108.14 (2m) of the statutes is amended to read:

12 108.14 (2m) In the discharge of their duties under this chapter an appeal
13 tribunal, commissioner, or other authorized representative of the department or
14 commission may administer oaths to persons appearing before them, take
15 depositions, certify to official acts, and by subpoenas, served in the manner in which
16 circuit court subpoenas are served, compel attendance of witnesses and the
17 production of books, papers, documents, and records necessary or convenient to be
18 used by them in connection with any investigation, hearing, or other proceeding
19 under this chapter. A party's attorney of record may issue a subpoena to compel the
20 attendance of a witness or the production of evidence. A subpoena issued by an
21 attorney must be in substantially the same form as provided in s. 805.07 (4) and must
22 be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of
23 issuance, send a copy of the subpoena to the appeal tribunal or other representative
24 of the department responsible for conducting the proceeding. However, in any
25 investigation, hearing, or other proceeding involving the administration of oaths or

1 the use of subpoenas under this subsection due notice shall be given to any interested
2 party involved, who shall be given an opportunity to appear and be heard at any such
3 proceeding and to examine witnesses and otherwise participate therein. Witness
4 fees and travel expenses involved in proceedings under this chapter may be allowed
5 by the appeal tribunal or representative of the department at rates specified by
6 department rules, and shall be paid from the ~~administrative account~~ appropriation
7 under s. 20.445 (1) (n).

8 **SECTION 24.** 108.14 (3m) of the statutes is amended to read:

9 108.14 (3m) In any court action to enforce this chapter the department, the
10 commission, and the state may be represented by any licensed attorney who is an
11 employee of the department or the commission and is designated by either of them
12 for this purpose or at the request of either of them by the department of justice. If
13 the governor designates special counsel to defend, in behalf of the state, the validity
14 of this chapter or of any provision of ~~Title IX of the social security act~~ 42 USC 1101
15 to 1111, the expenses and compensation of the special counsel and of any experts
16 employed by the department in connection with that proceeding may be charged to
17 the ~~administrative account~~ appropriation under s. 20.445 (1) (wd). If the
18 compensation is being determined on a contingent fee basis, the contract is subject
19 to s. 20.9305.

20 **SECTION 25.** 108.14 (7) (c) of the statutes is repealed.

21 **SECTION 26.** 108.14 (12) (a) to (d) of the statutes are consolidated, renumbered
22 108.14 (12) (am) and amended to read:

23 108.14 (12) (am) Consistently with the provisions of ~~pars. (8) and (9) of section~~
24 303 (a) of Title III of the federal social security act, 42 USC 503 (a) (8) and (9), the
25 department shall expend all moneys received in the federal administrative financing

1 account from any federal agency under said ~~Title III shall be expended~~ 42 USC ch.
2 7 subch. III solely for the purposes and in the amounts found necessary by said ~~that~~
3 agency for the proper and efficient administration of this chapter. ~~(b) Consistently~~
4 ~~with said provisions of said Title III, any~~ The department shall replace, within a
5 reasonable time, any such moneys, that were received prior to before July 1, 1941,
6 and remaining remained unencumbered on said that date, or that were received on
7 or after said that date, which, because of any action or contingency, have been if the
8 moneys are lost or have been expended for purposes other than, or in amounts in
9 excess of, those found necessary by said the federal agency for the proper
10 administration of this chapter, ~~shall be replaced within a reasonable time. This~~
11 ~~paragraph is the declared policy of this state, as enunciated by the 1941 legislature,~~
12 ~~and shall be implemented as further provided in this subsection.~~ ~~(c).~~ If it is believed
13 ~~that any amount of money thus received has been thus is~~ lost or improperly
14 expended, the department, on its own motion or on notice from said the federal
15 agency, shall promptly investigate and determine the matter and shall, depending
16 on the nature of its determination, take such steps as it may deem considers
17 necessary to protect the interests of the state. ~~(d)~~ If it is finally determined that
18 moneys ~~thus received~~ have been ~~thus~~ lost or improperly expended, then the
19 department shall either make the necessary replacement from ~~those moneys in the~~
20 ~~administrative account specified in s. 108.20 (2m)~~ the appropriation under s. 20.445
21 (1) (wd) or shall submit, at the next budget hearings conducted by the governor and
22 at the budget hearings conducted by the next legislature convened in regular session,
23 a request that the necessary replacement be made by an appropriation from the
24 general fund.

1 **SECTION 27.** 108.14 (12) (e) of the statutes is renumbered 108.14 (12) (bm) and
2 amended to read:

3 108.14 **(12)** (bm) This subsection shall not be construed to relieve this state of
4 any obligation existing ~~prior to its enactment~~ before July 1, 1941, with respect to
5 moneys received ~~prior to~~ before July 1, 1941, ~~pursuant to said Title III under 42 USC~~
6 ch. 7 subch. III.

7 **SECTION 28.** 108.14 (16) of the statutes is amended to read:

8 108.14 **(16)** The department shall have duplicated or printed, ~~and shall~~
9 ~~distribute without charge, such employment security~~ any reports, studies and,
10 forms, records, decisions, regulations, rules, or other materials, including the text of
11 this chapter ~~and, the handbook under sub. (23), and other~~ instructional or
12 explanatory pamphlets for employers or workers, as that it deems necessary for
13 public information or for the proper administration of this chapter; ~~but the.~~ The
14 department may collect a reasonable charge, which shall be credited to the
15 administrative appropriation account under s. 20.445 (1) (wd), for any such item the
16 cost of which is not fully covered by federal administrative grants.

17 **SECTION 29.** 108.14 (18) of the statutes is renumbered 108.19 (1e) (e) and
18 amended to read:

19 108.19 **(1e)** (e) No later than the end of the month following each quarter in
20 which the department expends moneys derived from assessments levied under ~~s.~~
21 ~~108.19 (1e)~~ this subsection, the department shall submit a report to the council on
22 unemployment insurance describing the use of the moneys expended and the status
23 at the end of the quarter of any project for which moneys were expended.

24 **SECTION 30.** 108.14 (23) (d) of the statutes is repealed.

25 **SECTION 31.** 108.16 (5) (c) of the statutes is amended to read:

1 108.16 (5) (c) While the state has an account in the “Unemployment Trust
2 Fund”, public deposit insurance charges on the fund’s balances held in banks,
3 savings banks, savings and loan associations, and credit unions in this state, the
4 premiums on surety bonds required of the fund’s treasurer under this section, and
5 any other expense of administration otherwise payable from the fund’s interest
6 earnings, shall be paid from the ~~administrative account~~ appropriation under s.
7 20.445 (1) (n) or (ne).

8 **SECTION 32.** 108.16 (6) (k) of the statutes is amended to read:

9 108.16 (6) (k) All payments to the fund from the ~~administrative account~~ as
10 authorized under s. ~~108.20 (2m)~~ appropriation under s. 20.445 (1) (wd).

11 **SECTION 33.** 108.16 (6) (m) of the statutes is amended to read:

12 108.16 (6) (m) Any amounts transferred to the balancing account from the
13 unemployment interest payment fund under s. 108.19 (1m) (f).

14 **SECTION 34.** 108.16 (8) (f) of the statutes is amended to read:

15 108.16 (8) (f) The successor shall take over and continue the transferor’s
16 account, including its positive or negative balance and all other aspects of its
17 experience under this chapter in proportion to the payroll assignable to the
18 transferred business and the liability of the successor shall be proportioned to the
19 extent of the transferred business. The transferor and the successor shall be jointly
20 and severally liable for any amounts owed by the transferor ~~to the fund and to the~~
21 ~~administrative account~~ under this chapter at the time of the transfer, but a successor
22 under par. (c) is not liable for the debts of the transferor except in the case of fraud
23 or malfeasance.

24 **SECTION 35.** 108.161 (title) of the statutes is amended to read:

1 **108.161** (title) **Federal administrative financing account; Reed Act**
2 **distributions.**

3 **SECTION 36.** 108.161 (1) and (1m) of the statutes are consolidated, renumbered
4 108.161 (1) and amended to read:

5 108.161 (1) The fund's treasurer shall maintain within the fund an
6 employment security "federal administrative financing account", and shall credit
7 thereto to that account all amounts credited to the fund pursuant to the federal
8 employment security administrative financing act (of 1954) and section 903 of the
9 federal social security act, as amended. ~~(1m)~~ The treasurer of the fund shall also
10 credit to said account under 42 USC 1101 to 1103 and all federal moneys credited to
11 the fund pursuant to under sub. (8).

12 **SECTION 37.** 108.161 (2) of the statutes is amended to read:

13 108.161 (2) The requirements of ~~said section 903~~ 42 USC 1103 shall control any
14 appropriation, withdrawal, and use of any moneys in said the federal administrative
15 financing account.

16 **SECTION 38.** 108.161 (3) of the statutes is amended to read:

17 108.161 (3) Consistently with this chapter and ~~said section 903~~, such 42 USC
18 1103, moneys in the federal administrative financing account shall be used solely for
19 benefits or employment security administration by the department, including
20 unemployment insurance, employment service, apprenticeship programs, and
21 related statistical operations.

22 **SECTION 39.** 108.161 (3e) of the statutes is amended to read:

23 108.161 (3e) Notwithstanding sub. (3), any moneys allocated under ~~section 903~~
24 ~~of the federal Social Security Act, as amended,~~ 42 USC 1103 for federal fiscal years
25 2000 and 2001 and the first \$2,389,107 of any distribution received by this state

1 under ~~section 903 of that act~~ 42 USC 1103 in federal fiscal year 2002 shall be used
2 solely for unemployment insurance administration.

3 **SECTION 40.** 108.161 (4) of the statutes is amended to read:

4 108.161 (4) ~~Such moneys~~ Moneys in the federal administrative financing
5 account shall be encumbered and spent for employment security administrative
6 purposes only pursuant to, and after the effective date of, a specific legislative
7 appropriation enactment that does all of the following:

8 (a) ~~Stating States~~ for which such purposes and in what amounts the
9 appropriation is being made ~~to the administrative account created by s. 108.20.~~

10 (b) ~~Directing Directs~~ the fund's treasurer to transfer the appropriated amounts
11 ~~to the administrative account~~ the appropriation account under s. 20.445 (1) (n) only
12 as and to the extent that they are currently needed for such expenditures, and
13 ~~directing directs~~ that there shall be restored to the federal administrative financing
14 ~~account created by sub. (1)~~ any amount thus transferred ~~which~~ that has ceased to be
15 needed or available for such expenditures.

16 (c) ~~Specifying Specifies~~ that the appropriated amounts are available for
17 obligation solely within the 2 years beginning on the appropriation law's date of
18 enactment. This paragraph does not apply to the appropriations under s. 20.445 (1)
19 (nd) and (ne) or to any amounts expended from the appropriation under s. 20.445 (1)
20 (nb) from moneys transferred to this state on March 13, 2002, pursuant to ~~section 903~~
21 ~~(d) of the federal Social Security Act~~ 42 USC 1103 (d).

22 (d) ~~Limiting Limits~~ the total amount ~~which~~ that may be obligated during any
23 fiscal year to the aggregate of all amounts credited under sub. (1), including amounts
24 credited ~~pursuant to~~ under sub. (8), reduced at the time of any obligation by the sum
25 of the moneys obligated and charged against any of the amounts credited.

1 **SECTION 41.** 108.161 (5) and (6) of the statutes are consolidated, renumbered
2 108.161 (5m) and amended to read:

3 108.161 **(5m)** The total of the amounts ~~thus~~ appropriated under sub. (4) for use
4 in any fiscal year shall in no event exceed the moneys available for such use
5 ~~hereunder~~ under this section, considering the timing of credits ~~hereunder~~ under this
6 section and the sums already spent or appropriated or transferred or otherwise
7 encumbered ~~hereunder~~. ~~(6)~~ under this section. The fund's treasurer shall keep a
8 record of all such ~~times and amounts~~; shall charge transactions and shall do all of the
9 following:

10 (a) Charge each sum against the earliest credits ~~duly~~ available therefor; shall
11 ~~include~~.

12 (b) Include any sum ~~thus~~ that has been appropriated but not yet spent
13 ~~hereunder~~ under this section in computing the fund's net balance as of the close of
14 any month, in line with the federal requirement that any such sum shall, until spent,
15 be considered part of the fund; ~~and shall certify~~.

16 (c) Certify the relevant facts whenever necessary ~~hereunder~~.

17 **SECTION 42.** 108.161 (7) of the statutes is amended to read:

18 108.161 **(7)** If any moneys appropriated ~~hereunder~~ under this section are used
19 to buy and hold suitable land, ~~with a view to the future construction of an~~ and to build
20 a suitable employment security building thereon, and if such land is later sold or
21 transferred to other use, the proceeds of such sale (, or the value of such land when
22 transferred), shall be credited to the federal administrative financing account
23 ~~created by sub. (1)~~ except as otherwise provided in ss. 13.48 (14) and 16.848.

24 **SECTION 43.** 108.161 (8) of the statutes is amended to read:

1 108.161 (8) If any sums are appropriated and spent ~~hereunder~~ under this
2 section to buy land and to build a suitable employment security building thereon, or
3 to purchase information technology hardware and software, ~~then~~ any federal
4 moneys thereafter credited to the fund or paid to the department by way of gradual
5 reimbursement of such employment security capital expenditures, or in lieu of the
6 estimated periodic amounts ~~which~~ that would otherwise (, in the absence of such
7 expenditures), be federally granted for the rental of substantially equivalent
8 quarters, shall be credited to the federal administrative financing account created
9 ~~by sub. (1)~~, consistently with any federal requirements applicable to the handling
10 and crediting of such moneys.

11 **SECTION 44.** 108.161 (9) of the statutes is amended to read:

12 108.161 (9) Any land and building or office quarters acquired under this section
13 shall continue to be used for employment security purposes. Realty or quarters may
14 not be sold or transferred to other use if prior action is taken under s. 13.48 (14) (am)
15 or 16.848 (1) and may not be sold or transferred without the governor's approval. The
16 proceeds from the sale, or the value of realty or quarters upon transfer, shall be
17 credited to the federal administrative financing account ~~established in sub. (1)~~ or
18 credited to the ~~fund established in s. 108.20~~ appropriate appropriation account
19 under s. 20.445, or both as determined by the department in accordance with federal
20 requirements. Equivalent substitute rent-free quarters may be provided, as
21 federally approved. Amounts credited under this subsection shall be used solely to
22 finance employment security quarters according to federal requirements.

23 **SECTION 45.** 108.162 (7) of the statutes is amended to read:

1 108.162 (7) Any amount appropriated under s. 20.445 (1) (na) ~~which~~ that has
2 not been obligated shall be available for employment security local office building
3 projects, consistent with this section and ~~ss. s. 108.161 and 108.20.~~

4 **SECTION 46.** 108.17 (2m) of the statutes is amended to read:

5 108.17 (2m) When a written statement of account is issued to an employer by
6 the department, ~~showing as duly credited~~ that shows a specified amount received
7 from the employer under this chapter as having been credited, no other form of state
8 receipt ~~therefor~~ is required.

9 **SECTION 47.** 108.17 (3) of the statutes is amended to read:

10 108.17 (3) If an employing unit ~~makes application~~ applies to the department
11 to adjust an alleged overpayment by the employer of contributions or interest under
12 this chapter, and files such an application within 3 years after the close of the
13 calendar year in which such payment was made, the department shall ~~make a~~
14 ~~determination~~ determine under s. 108.10 ~~as to the existence and whether and to~~
15 ~~what~~ extent of any such an overpayment, and said section shall apply to such
16 ~~determination~~ exists. Except as provided in sub. (3m), the department shall allow
17 an employer a credit for any amount determined under s. 108.10 to have been
18 erroneously paid by the employer, without interest, against its future contribution
19 payments; or, if the department finds it impracticable to allow the employer such a
20 credit, it shall refund ~~such~~ the overpayment to the employer, without interest, from
21 the fund or the ~~administrative account, as the case may be~~ appropriate appropriation
22 under s. 20.445.

23 **SECTION 48.** 108.17 (3m) of the statutes is amended to read:

24 108.17 (3m) If an appeal tribunal or the commission issues a decision under
25 s. 108.10 (2), or a court issues a decision on review under s. 108.10 (4), in which it is

1 determined that an amount has been erroneously paid by an employer, the
2 department shall, from the ~~administrative account~~ appropriation under s. 20.445 (1)
3 (wd), credit the employer with interest at the rate of 0.75 percent per month or
4 fraction thereof on the amount of the erroneous payment. Interest shall accrue from
5 the month which the erroneous payment was made until the month in which it is
6 either used as a credit against future contributions or refunded to the employer.

7 **SECTION 49.** 108.18 (7) (a) 1. of the statutes is amended to read:

8 108.18 (7) (a) 1. Except as provided in pars. (b) to (i), any employer may make
9 payments to the fund during the month of November in excess of those required by
10 this section and s. 108.19 (1), ~~(1e)~~, and ~~(1f)~~. Each payment shall be credited to the
11 employer's account for the purpose of computing the employer's reserve percentage
12 as of the immediately preceding computation date.

13 **SECTION 50.** 108.18 (7) (h) of the statutes is amended to read:

14 108.18 (7) (h) The department shall establish contributions, other than those
15 contributions required by this section and assessments required under s. 108.19 (1),
16 ~~(1e)~~, and ~~(1f)~~ and contributions other than those submitted during the month of
17 November or authorized under par. (f) or (i) 2., as a credit, without interest, against
18 future contributions payable by the employer or shall refund the contributions at the
19 employer's option.

20 **SECTION 51.** 108.19 (title) of the statutes is repealed and recreated to read:

21 **108.19 (title) Special assessments.**

22 **SECTION 52.** 108.19 (1) of the statutes is renumbered 108.19 (1) (a) and
23 amended to read:

24 108.19 (1) (a) Each employer subject to this chapter shall regularly ~~contribute~~
25 ~~to the administrative account at the rate of two-tenths of one~~ pay an assessment

1 equal to 0.2 percent per year on its payroll, except that the department may prescribe
2 at the close of any fiscal year such lower rates ~~of contribution~~ under this section
3 subsection, to apply to classes of employers throughout the ensuing fiscal year, as will
4 in the department's judgment adequately finance the administration of this chapter,
5 and as will in the department's judgment fairly represent the relative cost of the
6 services rendered by the department to each such class.

7 **SECTION 53.** 108.19 (1) (d) of the statutes is created to read:

8 108.19 (1) (d) Assessments under this subsection shall be credited to the
9 appropriation account under s. 20.445 (1) (wc).

10 **SECTION 54.** 108.19 (1e) (a) of the statutes is amended to read:

11 108.19 (1e) (a) Except as provided in par. (b), each employer, other than an
12 employer that finances benefits by reimbursement in lieu of contributions under s.
13 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable
14 under s. 108.18 and this section, pay an assessment ~~to the administrative account~~
15 for each year ~~prior to~~ before the year 2010 equal to the lesser of 0.01 percent of its
16 payroll for that year or the solvency contribution that would otherwise be payable
17 by the employer under s. 108.18 (9) for that year.

18 **SECTION 55.** 108.19 (1e) (cm) of the statutes is created to read:

19 108.19 (1e) (cm) Assessments under this subsection shall be credited to the
20 appropriation under s. 20.445 (1) (wh).

21 **SECTION 56.** 108.19 (1e) (d) of the statutes is amended to read:

22 108.19 (1e) (d) The department may expend the moneys received from
23 assessments levied under this subsection in the amounts authorized under s. 20.445
24 (1) ~~(gh)~~ (wh) for the renovation and modernization of unemployment insurance
25 information technology systems, specifically including development and

1 implementation of a new system and reengineering of automated processes and
2 manual business functions.

3 **SECTION 57.** 108.19 (1f) (a) of the statutes is amended to read:

4 108.19 (1f) (a) Except as provided in par. (b), each employer, other than an
5 employer that finances benefits by reimbursement in lieu of contributions under s.
6 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable
7 under s. 108.18 and this section, pay an assessment for each year equal to the lesser
8 of 0.01 percent of its payroll for that year or the solvency contribution that would
9 otherwise be payable by the employer under s. 108.18 (9) for that year.

10 (d) Assessments under this ~~paragraph~~ subsection shall be deposited in the
11 unemployment program integrity fund.

12 **SECTION 58.** 108.19 (1f) (c) of the statutes is amended to read:

13 108.19 (1f) (c) Notwithstanding par. (a), the department may, if it finds that the
14 full amount of the levy is not required to effect the purposes specified in ~~sub. (1s)~~ s.
15 108.20 (2) (b) for any year, prescribe a reduced levy for that year and in such case shall
16 publish in the notice under par. (b) the rate of the reduced levy.

17 **SECTION 59.** 108.19 (1m) of the statutes is renumbered 108.19 (1m) (a) and
18 amended to read:

19 108.19 (1m) (a) Each employer subject to this chapter as of the date a rate is
20 established under this subsection shall pay an assessment ~~to the unemployment~~
21 ~~interest payment fund~~ at a rate established by the department sufficient to pay
22 interest due on advances from the federal unemployment account under ~~Title XII of~~
23 ~~the federal social security act~~, 42 USC 1321 to 1324. The rate established by the
24 department for employers who finance benefits under s. 108.15 (2), 108.151 (2), or
25 108.152 (1) shall be 75 percent of the rate established for other employers. The

1 amount of any employer's assessment shall be the product of the rate established for
2 that employer multiplied by the employer's payroll of the previous calendar year as
3 taken from quarterly employment and wage reports filed by the employer under s.
4 108.205 (1) or, in the absence of the filing of such reports, estimates made by the
5 department.

6 (d) Each assessment made under this subsection is due within 30 days after the
7 date the department issues the assessment. ~~If the~~

8 (f) The department shall use amounts collected from employers under this
9 subsection ~~exceed the amounts needed to pay interest due on advances from the~~
10 federal unemployment account under 42 USC 1321 to 1324. If the amounts collected
11 exceed the amounts needed to pay that interest for a given year, the department shall
12 use any the excess to pay interest owed in subsequent years on advances from the
13 federal unemployment account. If the department determines that additional
14 interest obligations are unlikely, the department shall transfer the excess to the
15 fund's balancing account of the fund, the unemployment program integrity fund, or
16 both in amounts determined by the department.

17 **SECTION 60.** 108.19 (1m) (e) of the statutes is created to read:

18 108.19 (1m) (e) Assessments under this subsection shall be deposited in the
19 unemployment interest payment fund.

20 **SECTION 61.** 108.19 (1n) of the statutes is renumbered 108.19 (1m) (b) and
21 amended to read:

22 108.19 (1m) (b) The department shall publish as a class 1 notice under ch. 985
23 any rate established under ~~sub. (1m) par. (a)~~ within 10 days of after the date that the
24 rate is established.

1 **SECTION 62.** 108.19 (1p) of the statutes is renumbered 108.19 (1m) (c) and
2 amended to read:

3 108.19 **(1m)** (c) Notwithstanding ~~sub. (1m) par. (a)~~, an employer having a
4 payroll of \$25,000 or less for the preceding calendar year is exempt from any
5 assessment under ~~sub. (1m)~~ this subsection.

6 **SECTION 63.** 108.19 (1q) of the statutes is renumbered 108.20 (3) and amended
7 to read:

8 108.20 **(3)** UNEMPLOYMENT INTEREST PAYMENT FUND. There is created a separate,
9 nonlapsible trust fund designated as the unemployment interest payment fund
10 consisting of all amounts collected under ~~sub. s. 108.19~~ (1m) (a) and all interest and
11 penalties on those amounts collected under s. 108.22.

12 **SECTION 64.** 108.19 (1s) of the statutes is renumbered 108.20 (2), and 108.20
13 (2) (a) 2. and 3., as renumbered, are amended to read:

14 108.20 **(2)** (a) 2. Assessments levied and deposited into the unemployment
15 program integrity fund under ~~sub. (1f)~~ s. 108.19 (1f).

16 3. Amounts transferred under ~~sub. (1m)~~ s. 108.19 (1m) (f).

17 **SECTION 65.** 108.19 (2) of the statutes is renumbered 108.19 (1) (b) and
18 amended to read:

19 108.19 **(1)** (b) If the department finds, at any time within a fiscal year for which
20 it has prescribed lower contribution rates to the administrative account than the
21 maximum rate permitted under ~~sub. (1) par. (a)~~, that such lower rates will not
22 adequately finance the administration of this chapter or are excessive for that
23 purpose, the department may by general rule prescribe a new schedule of rates in no
24 case exceeding the specified maximum to apply under this ~~section~~ subsection for the
25 balance of the fiscal year.

1 **SECTION 66.** 108.19 (2m) of the statutes is renumbered 108.19 (1) (c) and
2 amended to read:

3 108.19 (1) (c) Within the limit specified by ~~sub. (1)~~ under par. (a), the
4 department may by rule prescribe at any time as to any period any such rate or rates
5 or schedule as it deems necessary and proper ~~hereunder~~ under this subsection.
6 Unless thus prescribed, no such rate or rates or schedule shall apply under ~~sub. (1)~~
7 ~~or (2)~~ par. (a) or (b).

8 **SECTION 67.** 108.19 (4) of the statutes is renumbered 108.18 (1) (c) and
9 amended to read:

10 108.18 (1) (c) ~~If section 303 Notwithstanding par. (b), if 42 USC 503 (a) (5) of~~
11 ~~title III of the social security act and section 26 USC 3304 (a) (4) of the internal~~
12 ~~revenue code are amended to permit a state agency to use, in financing~~
13 ~~administrative expenditures incurred in carrying out its employment security~~
14 ~~functions, some any part of the moneys collected or to be collected under the state~~
15 ~~unemployment insurance law, an employer's contributions in partial or complete~~
16 ~~substitution for grants under title III 42 USC 501 to 506, then this chapter shall, by~~
17 ~~rule of the department, be modified in the manner and to the extent and within the~~
18 ~~limits necessary to permit such use by the department under this chapter; and the~~
19 ~~modifications shall become effective on the same date as such use becomes~~
20 ~~permissible under the federal amendments~~ the department may credit any portion
21 of that part of an employer's contributions to the appropriation under s. 20.445 (1)
22 (wd).

23 **SECTION 68.** 108.20 of the statutes is repealed and recreated to read:

24 **108.20 Segregated funds. (1) UNEMPLOYMENT ADMINISTRATION FUND.** There
25 is created a separate, nonlapsible trust fund designated as the unemployment

1 administration fund consisting of moneys credited to the appropriation accounts
2 under s. 20.445 (1) (wc), (wd), and (wh).

3 **(2) UNEMPLOYMENT PROGRAM INTEGRITY FUND.**

4 **SECTION 69.** 108.22 (1) (am) of the statutes is amended to read:

5 108.22 **(1)** (am) The interest, penalties, and tardy filing fees levied under pars.
6 (a), (ac), (ad), and (af) shall be paid to the department and credited to the
7 administrative account appropriation under s. 20.445 (1) (wd).

8 **SECTION 70.** 108.22 (1m) of the statutes is amended to read:

9 108.22 **(1m)** If any person owes any contributions, reimbursements or
10 assessments under s. 108.15, 108.151, 108.152, 108.155, or 108.19 ~~(1m)~~, benefit
11 overpayments, interest, fees, payments for forfeitures, other penalties, or any other
12 amount to the department under this chapter and fails to pay the amount owed, the
13 department has a perfected lien upon the right, title, and interest in all of the
14 person's real and personal property located in this state in the amount finally
15 determined to be owed, plus costs. Except where creation of a lien is barred or stayed
16 by bankruptcy or other insolvency law, the lien is effective upon the earlier of the date
17 on which the amount is first due or the date on which the department issues a
18 determination of the amount owed under this chapter and shall continue until the
19 amount owed, plus costs and interest to the date of payment, is paid, except as
20 provided in sub. (8) (d). If a lien is initially barred or stayed by bankruptcy or other
21 insolvency law, it shall become effective immediately upon expiration or removal of
22 such bar or stay. The perfected lien does not give the department priority over
23 lienholders, mortgagees, purchasers for value, judgment creditors, and pledges
24 whose interests have been recorded before the department's lien is recorded.

25 **SECTION 71. Fiscal changes.**

1 (1) The unencumbered balance in the appropriation account under s. 20.445 (1)
2 (gg), 2021 stats., immediately before the effective date of the repeal of s. 20.445 (1)
3 (gg), 2021 stats., and the unencumbered balance in the appropriation account under
4 s. 20.445 (1) (gm), 2021 stats., immediately before the effective date of the repeal of
5 s. 20.445 (1) (gm), 2021 stats., are transferred to the appropriation account under s.
6 20.445 (1) (wd), as affected by this act.

7 (2) (a) The unencumbered balance in the appropriation account under s. 20.445
8 (1) (gc) is transferred to the appropriation account under s. 20.445 (1) (wc).

9 (b) The unencumbered balance in the appropriation account under s. 20.445 (1)
10 (gd) is transferred to the appropriation account under s. 20.445 (1) (wd).

11 (c) The unencumbered balance in the appropriation account under s. 20.445 (1)
12 (gh) is transferred to the appropriation account under s. 20.445 (1) (wh).

13 **SECTION 72. Effective date.**

14 (1) This act takes effect on the first Sunday after publication.

15 (END)

Date: April 20, 2023
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI RULE CHANGE
Amend Administrative Rules Regarding UI Hearings**

1. Description of Proposed Change

Current law provides that unemployment insurance hearings may be held in-person, by telephone, or by videoconference. Under current DWD § 140.11, an appeal tribunal may conduct a telephone or videoconference hearing “when it is impractical for the appeal tribunal to conduct an in-person hearing, when necessary to ensure a prompt hearing or when one or more of the parties would be required to travel an unreasonable distance to the hearing location.” That section also provides that a party may appear in person at the appeal tribunal’s location if the hearing is scheduled by telephone or videoconference. However, the Department’s limited hearing office space and ALJ scheduling make it impractical for a party scheduled for a telephone or video conference hearing to appear in person without advance notice.

Since March 2020, Wisconsin unemployment insurance benefit appeal hearings have virtually all been held by telephone. The Department will continue to hold telephone hearings and will increase videoconferencing capabilities. In the months before the pandemic, about 99.6% of hearings were held by telephone. Even before the pandemic, other states held nearly all their unemployment hearings by telephone:

State	Percent of UI hearings by phone (2019)
Illinois	99.9%
Minnesota	99.9%
Michigan	94%
Iowa	98%
Indiana	96%
Nebraska	99% (2 in-person/year)

Ohio	98%
Kansas	99%

The Department proposes to amend chapter DWD 140 to provide that, while either party to a matter may continue to request in-person hearings, it is the hearing office's discretion, within standards set by the Department, whether to grant that request. The Department also proposes to clarify language in DWD chapter 140 regarding the following: inspection of hearing records under DWD § 140.09; Departmental assistance for people with disabilities at hearings under DWD § 140.19; and postponement requests when the hearing exhibits are not sent timely under DWD § 140.08. Further, the Department seeks to correct minor and technical language in DWD chapter 140.

2. Proposed Rule Changes

If the attached draft scope statement is approved, the Department will draft amendments to DWD chapter 140 and will present that draft to the Council for review before the rule is finalized.

3. Effects of Proposed Change

- a. **Policy:** The proposed change will amend Wisconsin's unemployment insurance administrative rules to ensure that parties have access to hearings, whether in person or by telephone or videoconferencing, while recognizing the limitations on physical space availability for hearings. It will also ensure parties receive records timely in advance of the hearing. Finally, it seeks to comport the language under DWD 140.09 to the confidentiality provisions under ch. DWD 149.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** This proposal is expected to reduce travel costs for parties and witnesses attending unemployment insurance hearings.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective when the Legislature approves the amended rule.

STATEMENT OF SCOPE

Department of Workforce Development

Rule No: DWD 140

Relating to: Unemployment insurance hearings.

Rule Type: Permanent

Detailed description of the objective of the proposed rule.

The proposed rule will amend sections of ch. DWD 140, Wis. Admin. Code, related to hearing notices; in-person, telephone, and videoconference unemployment insurance hearings procedures; hearing records; and accessibility for attending hearings. The rule will specify the procedure by which a party or witness may request to attend a hearing in-person. The rule will also permit postponement of a hearing if the Department does not send the proposed hearing exhibits in advance of a benefit hearing. The rule will also clarify what unemployment insurance records may be released to a person who is not a party or a party's representative.

Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

Currently, ch. DWD 140 (Unemployment Insurance Appeals) specifies the requirements for unemployment insurance hearing notices, the procedures for conducting telephone or videoconference hearings, the treatment of hearing records, and the requirements for the Department to provide assistance to people with disabilities at hearings. Chapter DWD 140 also provides for postponement of hearings in certain circumstances. Furthermore, ch. DWD 140 outlines when parties, parties' representatives, and other persons may access and inspect enumerated types of hearing records.

The Department proposes to amend ch. DWD 140 to require that the hearing notice provide the method of the hearing (in person, telephone, or videoconference). The rule will also identify the process by which a party can request an in-person hearing or a hearing by video-conference. Also, the Department proposes to amend ch. DWD 140 to provide that it is within the discretion of the hearing office whether to hold an in-person hearing or to require the parties to appear by telephone or videoconference and to provide the guidelines under which the hearing office shall make such determinations, such as technological constraints and the need to accommodate individuals with disabilities. Further, the rule will allow a party to request an in-person hearing, subject to the guidelines. Chapter DWD 140 will also be amended to ensure that the Department is timely and efficiently responding to requests for reasonable accommodations and to describe the process by which a party will make such a request.

The Department also proposes to amend ch. DWD 140 to permit a party to request a postponement of benefit hearings when the Department does not timely send the hearing exhibits to a party.

Finally, consistent with ch. DWD 149, the rule will update ch. DWD 140 to provide that certain hearing records are confidential unemployment information and not subject to release to individuals who are not parties or representatives of the parties.

The policy alternative is to do nothing. If the Department does not promulgate the proposed rule, the unemployment insurance appeals process may not be as clear and efficient as it could be.

Detailed explanation of statutory authority for the rule, including the statutory citation and language.

The Department has statutory authority for the proposed rule.

“The department may adopt and enforce all rules which it finds necessary or suitable to carry out this chapter.” Wis. Stat. § 108.14(2).

“Except as provided in s. 901.05, the manner in which claims shall be presented, the reports thereon required from the employee and from employers, and the conduct of hearings and appeals shall be governed by general department rules, whether or not they conform to common law or statutory rules of evidence and other technical rules of procedure, for determining the rights of the parties.” Wis. Stat. § 108.09(5)(a).

Estimate of amount of time that state employees will spend developing the rule and other resources necessary to develop the rule.

The estimated time is 80 hours.

List with description of all entities that may be affected by the proposed rule.

Currently, all employees and employers who appear at unemployment insurance appeal hearings appear by telephone. Before the pandemic, nearly all unemployment insurance appeal hearings were held by telephone. The proposed rule will affect employees and employers who attend unemployment insurance appeal hearings. Employees and employers who previously appeared at unemployment insurance appeal hearings in person will save travel time and costs by appearing by telephone or videoconference. The proposed rule will also standardize the process for requesting an accommodation for hearings for individuals with disabilities who are parties or witnesses for the hearing. The rule changes will better allow parties to prepare for hearing. Finally, the proposed rule will clarify which hearing records, subject to redaction, may be released to non-parties.

Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

Federal law requires that state law conform to and comply with federal regulations. *See* 20 C.F.R. § 601.5.

Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses).

The proposed rule is not expected to have an adverse economic impact on any business or small business.

Contact Person: Janell Knutson, Director, Bureau of Legal Affairs, Unemployment Insurance Division, at (608) 266-1639 or janell.knutson@dwd.wisconsin.gov.

DRAFT

Unemployment Reform Ideas for 2023-2024 Session

Program Integrity Measures

- **Work Search Verification** - Require the Department to verify work search information reported by at least 50% of claimants to ensure the work searches are legitimate.
- **Ghosting Portal for Employers** – Create an online portal that allows employers to report to the Department a job applicant’s refusal of work, a refusal of an offer to attend a job interview, a no-show for a scheduled job interview with an applicant, or a no-show for their first day of work.
- **Federal Unemployment Funds** – Require the Legislature and Governor to approve an increase in federally-funded unemployment benefits.
- **Identity Verification** – Require the Department to verify an applicant’s identity prior to awarding benefits. Require multi-factor identification to ensure validity of applicants. Match applicant data against death records, inmate records, employment records, and current UI recipients to prevent fraudulent benefits. In addition, require department staff to flag benefit applications with duplicate, out-of-state, or foreign I.P. addresses for further review, as well as applicants who use the same bank account or mailing address.

Other Items

- **Union Referral Service Reporting Requirement** – Require union hiring halls/referral services to report to the Department within 24 hours each instance where a worker refuses an offer of work.
- **Definition of Employee vs. Independent Contractor** – Establish a clear, consistent and objective standard to define the difference between an employee and an independent contractor. The definition should apply universally across all chapters of the statutes (e.g. UI, Workers Compensation, Wage & Hour, Equal Rights, DOR tax administration, etc.), and should account for new “gig economy” economic opportunities. Specific language attached.
- **Quit Good Cause Revision** – Repeal the quit good cause exception under s. 108.04(7)(e).

Under current law if you quit a job within the first 30 days of hire and you could have refused the offer of work under the “suitable work” provisions you can collect benefits. This proposal would eliminate that quit exception.

- **Link Benefit Eligibility Weeks to Unemployment Rate** – Under current law individuals that are eligible for unemployment are generally entitled to 26 weeks of benefits. The average benefit duration has historically been about 14 weeks. This proposal would reduce the weeks of unemployment eligibility as follows, based upon the unemployment rate.

State Unemployment Rate	Weeks of Benefit Eligibility
Less than or equal to 5.0%	16
5.0% to 6.0%	18
6.1% to 7.0%	20
7.1% to 8.0%	22
8.0% to 10%	24
Greater than 10%	26

Determine the applicable unemployment rate and corresponding benefit eligibility, by using the seasonally adjusted statewide unemployment rate published by the US Department of Labor for April and October. The benefit eligibility for January through June would be based on the prior October unemployment rate, while the benefit eligibility for July through December would be based on the April unemployment rate.

- **Clarify Definitions/Grounds for Misconduct and Substantial Fault** – Based upon a number of appellate court decisions and case-specific experiences of employers, make changes to these definitions to more accurately capture the intent and spirit of the 2013-2014 session reforms. Draft language attached.

Misconduct & Substantial Fault Clarification – Draft Language

(5) DISCHARGE FOR MISCONDUCT. An employee whose work is terminated by an employing unit for misconduct by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be the rate that would have been paid had the discharge not occurred. The wages paid to an employee by an employer which terminates employment of the employee for misconduct connected with the employee's employment shall be excluded from the employee's base period wages under s. 108.06 (1) for purposes of benefit entitlement. This subsection does not preclude an employee who has employment with an employer other than the employer which terminated the employee for

misconduct from establishing a benefit year using the base period wages excluded under this subsection if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this subsection. For purposes of this subsection, "misconduct" means one or more actions or conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect of his or her employees, or in carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design of equal severity to such disregard, or to show an intentional and substantial disregard of an employer's interests, or of an employee's duties and obligations to his or her employer. In addition, "misconduct" includes:

- (a) A violation by an employee of an employer's reasonable written policy concerning the use of alcohol beverages, or use of a controlled substance or a controlled substance analog, if the employee:
 1. Had knowledge of the alcohol beverage or controlled substance policy; and
 2. Admitted to the use of alcohol beverages or a controlled substance or controlled substance analog or refused to take a test or tested positive for the use of alcohol beverages or a controlled substance or controlled substance analog in a test used by the employer in accordance with a testing methodology approved by the department.
- (b) Theft or unauthorized possession of an employer's property or services with intent to deprive the employer of the property or services permanently, theft or unauthorized distribution of an employer's confidential or proprietary information, use of an employer's credit card or other financial instrument for an unauthorized or non-business purpose without prior approval from the employer, theft of currency of any value, felonious conduct connected with an employee's employment with his or her employer, or intentional or negligent conduct by an employee that causes the destruction of an employer's records or substantial damage to his or her employer's property.
- (c) Conviction of an employee of a crime or other offense subject to civil forfeiture, while on or off duty, if the conviction makes it impossible for the employee to perform the duties that the employee performs for his or her employer.
- (d) One or more threats or acts of harassment, assault, or other physical violence instigated by an employee at the workplace of his or her employer.
- (e) Absenteeism or tardiness by an employee that constitutes any of the following, unless the employee provides his or her employer with both advance notice and one or more valid reasons for each instance of absenteeism or tardiness:
 1. More than 2 occasions absences within the 120-180-day period before the date of the employee's termination; or
 2. One or more occasions absences if prohibited by unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature; or
 3. More than 3 instances of excessive tardiness by an employee in violation of the employer's normal business hours or a policy of the employer that has been communicated to the employee; if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.
- (f) Unless directed by an employee's employer, falsifying business records of the employer.
- (g) Unless directed by the employer, a willful and deliberate violation of a written and uniformly applied standard or regulation of the federal government or a state or tribal government by an employee of an employer that is licensed or certified by a governmental agency, which standard or regulation has

been communicated by the employer to the employee and which violation would cause the employer to be sanctioned or to have its license or certification suspended by the agency.

- (h) A violation by an employee of an employer's written policy concerning the use of social media, if the employee had knowledge of the social media policy.

(5g) DISCHARGE FOR SUBSTANTIAL FAULT.

(a) An employee whose work is terminated by an employing unit for substantial fault by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's benefit rate shall be the rate that would have been paid had the discharge not occurred. For purposes of this paragraph, "substantial fault" includes those acts or omissions of an employee over which the employee exercised reasonable control and which violate reasonable requirements of the employee's employer but does not include any of the following:

1. One or more minor infractions of rules unless an infraction is repeated after the employer warns the employee about the infraction.
2. One or more inadvertent errors made by the employee, unless the error violates a written policy of the employer, endangers the safety of the employee or another person, causes bodily harm to the employee or another person, or the error is repeated after the employer warns the employee about the error.
3. Any failure of the employee to perform work because of insufficient skill, ability, or equipment.

(b) The department shall charge to the fund's balancing account the cost of any benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 if the employee is discharged by the employer and paragraph (a) applies.

Worker Classification Proposed Language

s. 111.xx Worker Classification (1) It is in the best interests of workers, business, and government to have clear, objective, and uniform standards for determining who is an employee and who is an independent contractor. Clarity in a worker's classification allows businesses to comply with applicable laws, provides workers with certainty as to their benefits, legal rights, and obligations, and minimizes unnecessary mistakes, litigation, risk, legal exposure, and noncompliance.

(2) Except as provided in sub. (3), a person shall be classified as an independent contractor for all purposes under the laws of this state, including but not limited to laws governing unemployment insurance, workers compensation, wage and hour, fair employment, and tax administration, if all of the following apply:

(a) The person signs a written contract with the employer, in substantial compliance with the terms of this subsection, that states the employer's intent to retain the services of the person as an independent contractor and contains acknowledgements that the person understands that he or she is:

1. Providing services for the employer as an independent contractor;
2. Not going to be treated as an employee of the employer;
3. Not going to be provided by the employer with either worker's compensation or unemployment compensation benefits;
4. Obligated to pay all applicable federal and state income taxes, if any, on any monies earned pursuant to the contractual relationship, and that the employer will not make any tax withholdings from any payments from the employer;
5. Responsible for the majority of supplies and other variable expenses that he or she incurs in connection with performing the contracted services unless the expenses are for travel that is not local; the expenses are reimbursed under an express provision of the contract; or the supplies and/or expenses reimbursed are commonly reimbursed under industry practice.

(b) Except as provided in par. (c), the person provides his or her services through a business entity, including but not limited to, a partnership, limited liability company or corporation, or through a sole proprietorship, registered as required under state law.

(c) The requirement in par. (b) does not apply if the person has either filed, intends to file, or is contractually required to file, in regard to the fees from the work, an income tax return with the Internal Revenue Service for a business or for earnings from self-employment.

(d) The person satisfies four or more of the following criteria:

1. With the exception of the exercise of control necessary to ensure compliance with statutory, regulatory, licensing, permitting, contractual or other similar obligations, or to protect persons and/or property, or to protect a franchise brand, the person has the right to control the manner and means by which the work is to be accomplished, even though he or she may not have control over the final result of the work. This provision is satisfied even though the employer may provide orientation, information, guidance, or suggestions about the employer's products, business, services, customers and operating systems, and training otherwise required by law.
2. Except for an agreement with the employer relating to final completion or final delivery time or schedule, range of work hours, or the time entertainment is to be presented if the work contracted for is entertainment, the person has control over the amount of time personally spent providing services.
3. Except for services that can only be performed at specific locations, the person has control over where the services are performed.
4. The person is not required to work exclusively for one employer unless:
 - i. A law, regulation or ordinance prohibits the person from providing services to more than one employer; or
 - ii. A license or permit that the person is required to maintain in order to perform the work limits the person to working for only one employer at a time or requires identification of the employer.
5. The person is free to exercise independent initiative in soliciting others to purchase his or her services.
6. The person is free to hire employees or to contract with assistants, helpers, and/or substitutes to perform all or some of the work.

7. The person cannot be required to perform additional services without a new or modified contract.
8. The person obtains a license or other permission from the employer to utilize any workspace of the employer in order to perform the work for which the person was engaged.
9. The employer has been subject to an employment audit by the Internal Revenue Service or the department and the IRS or the department has not reclassified the person to be an employee or has not reclassified the category of workers to be employees.
10. The person is responsible for maintaining and bearing the costs of any required business licenses, insurance, certifications or permits required to perform the services.

(3) All workers who do not satisfy the criteria set forth in sub. (2) shall be classified as employees. In addition, nothing in sub. (2) shall require an employer to classify a worker who meets the criteria contained therein as an independent contractor; the employer is free to hire the worker as an employee.

(4) The legislature finds that worker classification criteria used to determine independent contractor status that are uniform throughout the state is a matter of statewide concern and that the enactment of an ordinance by a city, village, town, or county regulating the worker classification criteria used to determine independent contractor status would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of the worker classification criteria used to determine independent contractor status set forth in this section. Therefore, the worker classification criteria used to determine independent contractor status in this section shall be construed as an enactment of statewide concern for the purpose of providing worker classification criteria used to determine independent contractor status that are uniform throughout the state.

- (a) No city, village, town, or county may enact or enforce an ordinance regulating worker classification or the criteria used to determine independent contractor status.

2023 UIAC Proposal Exchange

- 1.) Increase the weekly benefit rate for UI Claimants
 - a.) Many states including Wisconsin base their UI maximum benefit rate off the average weekly wage for that state.
 - b.) A few examples of our bordering states are as follows: (estimates)
 - 1.) Minnesota is based off 66% of a weekly rate of \$1341.
 - 2.) Illinois is based off 54% of a weekly rate of \$1399.
 - 3.) Indiana is based off 37% of a weekly rate of \$1117.
 - 4.) Iowa is based off 59% of a weekly rate of \$1103.
 - 5.) Wisconsin is based off 33% of a weekly rate of \$1139.
 - c.) Minnesota sets their percentage to index annually while Wisconsin's rate is fixed.
 - d.) Propose to raise Wisconsin's maximum benefit rate percentage to 47% in 2023 and then in 2024 adjust the rate to 55%. (Example = $\$1139 \times 47\% = \535.00)
- 2.) Currently the one week waiting period is only applicable once per benefit year. Propose to limit the one-week waiting period to be used only once every three benefit years prospectively.
- 3.) Increase the UI Wage Base.
 - a.) The current wage base is set at \$14,000. Create a one-time increase of \$1,500 for Jan 1, 2025, which would bring base to \$15,500.

Below are preliminary estimations of the increase in UI benefits and the cost to the UI Trust Fund due to increasing the maximum weekly benefit rate as laid out in the proposal.

The estimates for the increase in Regular UI benefits and cost to the UI Trust Fund is based upon 2022 benefit years that monetarily qualified for UI benefits. The wages for future years were estimated using S&P wage growth projections for Wisconsin over the next 5 years. During this period wages are expected to grow robustly at about 4% per year. The same calculations were used to estimate future maximum weekly benefit rates. The new weekly benefit rates were then calculated for each year. The estimates were weighed by the number of claimants and duration under three scenarios, low unemployment claims like currently being experienced, claims similar to the period of 2014 to 2016, and a large recession similar to the 2008 recession or the Pandemic. Keep in mind that it is very unlikely for a recession to cover a full five years. The increase in each year is versus if the maximum weekly benefit rate remained at \$370 in that year.

Calculating the cost for the UI Trust Fund includes adjusting UI tax increase and benefits paid by reimbursable employers.

Increase of UI Benefit Payments Over Current Weekly Maximum Benefit Rate (Millions \$)

Year	Max Weekly Benefit Rate	Current Claim Levels	2014-2016 Claim Levels	Recession Claim Levels
2024	\$596	\$127	\$335	\$1,060
2025	\$729	\$182	\$323	\$1,520
2026	\$759	\$202	\$358	\$1,684
2027	\$790	\$223	\$394	\$1,855
2028	\$819	\$242	\$429	\$2,020

Cost to the UI Trust Fund Over the Current Weekly Maximum Benefit Rate (Millions \$)

Year	Max Weekly Benefit Rate	Current Claim Levels	2014-2016 Claim Levels	Recession Claim Levels
2024	\$596	\$81	\$214	\$678
2025	\$729	\$116	\$207	\$973
2026	\$759	\$129	\$229	\$1,078
2027	\$790	\$143	\$252	\$1,187
2028	\$819	\$155	\$275	\$1,293

The increase in UI tax revenue from increasing the wage base from \$14,000 to \$15,500 is expected to be approximately \$36 million annually. This was determined by recalculating the tax due for firms in 2022 based upon reported wages and the reported tax rate.

Unemployment Insurance Advisory Council

Tentative Schedule

2023-2024

January 19, 2023	Scheduled Meeting of UIAC Discuss Public Hearing Comments
April 20, 2023	Scheduled Meeting of UIAC Introduce Department Proposals
May 18, 2023	Scheduled Meeting of UIAC Discuss Department Proposals Exchange of Labor & Management Law Change Proposals
June 15, 2023	Scheduled Meeting of UIAC Discuss Department Proposals Discuss Labor & Management Proposals
July 20, 2023	Scheduled Meeting of UIAC Discussion and Agreement on Law Changes for Agreed Upon Bill
August 17, 2023	Scheduled Meeting of UIAC Review and Approval of Department Draft of Agreed Upon Bill
September 21, 2023	Scheduled Meeting of UIAC Review and Approval of LRB Draft of Agreed Upon Bill
October 19, 2023	Scheduled Meeting of UIAC Final Review and Approval of LRB Draft of Agreed Upon Bill
November 16, 2023	Scheduled Meeting of UIAC Agreed Upon Bill Sent to the Legislature for Introduction UIAC Activities Report (due by January 2024)
December 2023	Tentative Meeting of UIAC
January 2024	Tentative Agreed Upon Bill Sent to the Legislature for Introduction in the Spring 2020 Legislative Session