



## Fiscal Estimate Narratives

OSER 11/19/2009

LRB Number	<b>09-3340/6</b>	Introduction Number	<b>AB-0551</b>	Estimate Type	<b>Original</b>
<b>Description</b> Furlough of executive branch state employees during the 2009-11 fiscal biennium and making an appropriation					

### Assumptions Used in Arriving at Fiscal Estimate

Assembly Bill 551 would exempt certain state employees from the requirement to take unpaid furlough leaves of absence during the 2009-2011 biennium if they meet one of the following:

1. if the employee's salary is derived from federal revenues or an appropriation of gifts and grants; or
2. if the employee's unpaid leave of absence would generate overtime pay; or
3. if the employee's position generates revenues that exceed his or her salary and fringe benefit costs.

The bill further states that an agency must submit a request for exemption to the Joint Committee on Finance (JFC) and it can approve, modify or disapprove the request. If JFC approves the request to exempt certain state employees from the furlough program, the appropriation that is used to pay salary and fringe benefit costs for the employee's position must be supplemented. In order to provide a general sense of the potential fiscal effect of AB-551, the Office of State Employment Relations (OSER) made several assumptions:

- FED dollars are based on the Legislative Fiscal Bureau summary of the 2009-2011 state budget showing the funding reductions by fund source of the furloughs.
- Revenue generating positions are based on the civil service classification specifications. Not all employees in these classifications will necessarily generate enough revenue to qualify for exemption from furlough under the bill's provisions, but all have the ability within their classification specification job duties to potentially generate that revenue. Not included in this number are unclassified positions within the University of Wisconsin System or management within the Classified Service.
- Overtime hours are compiled from the Central Payroll Hours & Dollar reports and include both straight-time and premium overtime hours for all employees.
- Contractual service contract information is compiled from the Department of Administration's contractual service purchasing report for Fiscal Year 2009.
- Furlough usage by state was based on a review of the 50 states by OSER staff.

On May 28, 2009, the Joint Committee on Finance approved a motion adding furlough language to the state budget. Then on June 23, 2009, Governor Doyle issued Executive Order #285 directing state agencies to develop plans to administer the furlough program for the 2009-2011 biennium. Final passage of the 2009-2011 Biennial State Budget including the furlough language occurred on June 29, 2009.

Proponents of AB-551 have argued that a major reason for passage of the bill is that furloughs will increase overtime use among state employees. The furlough program began on July 6, 2009. OSER has done a preliminary review of overtime usage comparing the first quarter of the 2008-2009 fiscal year to the first quarter of 2009-2010. Actual overtime use went down in the first quarter of the 2009-2011 biennium. While reasons can vary as to overtime use, it appears that the furlough program did not cause a significant increase in overtime. OSER will be issuing a report on overtime use.

Proponents of AB-551 have argued that public health and safety workers who are required to use eight days of furlough in each fiscal year of the biennium would have to see their shifts backfilled at overtime rates or completed by private contractors at higher cost. While it is difficult to know what would happen in every job shift, OSER has been able to do a preliminary look at overtime usage for Departments that have a large number of public health and safety workers. The Department of Corrections saw a significant reduction in

the first quarter of the current biennium and the Department of Health Services saw a reduction during the same time period. The Department of Veterans Affairs saw a slight increase in the first quarter. It is clear that overtime trends in state agencies with large numbers of public health and safety workers were not affected by the furlough program in the first quarter of the biennium.

Wisconsin is one of 22 states that have implemented a furlough program in the past year. The average number of furlough days per year among the 22 states is 12.73. California has the most furlough days per year at 36, with Georgia next with 30. Wisconsin's furlough program requires eight days per year. Many municipalities in Wisconsin and throughout the nation have also initiated furlough programs.

The bill creates a procedure whereby executive branch state agencies may exempt an employee from the leave of absence requirement if the employee, while performing his or her duties on an annual basis, generates revenues that exceed his or her annual salary and fringe benefit costs. If the Joint Committee on Finance exempts an employee from the leave of absence requirement, the appropriation that is used to pay salary and fringe benefit costs must be supplemented by the Committee. OSER has reviewed employee classifications that are potential net revenue generators. Over 100 classifications meet that definition. Assuming all agencies request an exemption for all employees in this category, this provision would require a supplement of \$4,249,100 GPR. This estimate does not include unclassified employees of the University of Wisconsin System or management within the Classified Service.

The bill exempts executive branch employees whose compensation is from federal revenue from the 2009-2011 furlough requirements. According to information provided by the Legislative Fiscal Bureau summary of the furlough impact on agency budgets, this provision would require a supplement of \$15,661,800 FED annually. These are not general fund dollars, but the JFC would have to supplement the agencies in order for them to pay out the salary and fringe costs. Positions that generate revenues from gifts and grants are treated in the same manner. OSER estimates that the JFC would need to supplement appropriations from gifts and grants by \$164,000 GPR.

Finally, language in AB-551 would not allow during the 2009-2011 fiscal biennium a state agency to enter into, renew, or extend any contractual services contracts with private contractors or consultants for the remainder of that fiscal biennium for the performance of services of executive branch employees who would have performed the services had they not have been required to serve an unpaid leave of absence. The intent of the language appears to be to limit the State of Wisconsin's use of contractual service contracts during the biennium. According to the latest Department of Administration Contractual Services Purchasing report, dated November 9, 2009, state agency contracting decreased by 3% in FY09 and has decreased by 25% since FY05.

OSER represents the State of Wisconsin in collective bargaining with 19 separate bargaining units. Most bargaining units have negotiated Memorandums of Understanding (MOU) with the state relating to the use of furloughs. MOU's are an extension/modification of the existing collective bargaining agreements that the state has with its bargaining units. Article 1, Section 12 of the Wisconsin Constitution states that "No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts shall be passed and conviction shall work corruption or blood or forfeiture of estate." In addition, Wisconsin State Statute 111.93(3) states that "if a collective bargaining agreement exists between the employer and a labor organization representing employees in a collective bargaining unit, the provisions of that agreement shall supersede the provisions of civil service and other applicable statutes, as well as rules and policies of the board of regents of the University of Wisconsin System, related to wages, fringe benefits, hours, and conditions of employment whether or not the matters contained in those statutes, rules, and policies are set forth in the collective bargaining agreement." The nonstatutory provisions contained in AB-551 may violate the intent of both Wisconsin State Statutes and the Wisconsin Constitution.

Executive Order #285 issued by Governor Doyle on June 23, 2009 required all employees of state agencies and the University of Wisconsin System (UWS) to take eight days or their equivalent (64 hours) of unpaid leave (furlough days) during each fiscal year of the 2009-2011 fiscal biennium, for a total of sixteen furlough days (128 hours) in the 2009-2011 biennium. The goal of the furlough program was to reduce state spending by reducing hours worked for all state employees. Treating all employees equally, regardless of funding source for the position, was deemed the fairest way to reduce spending without any potential for favoritism. The provisions of AB-551 would not treat employees equally. Instead, funding sources would become a determinate factor. Whether an employee is funded by FED, SEG, PRO or GPR could determine whether furlough use is required. Beyond questions of fairness and equity, there is the potential for administrative difficulties in implementing the provisions of AB-551.

## **Long-Range Fiscal Implications**

AB 551 would decrease existing revenues and the revenue lost is indeterminate.