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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Labor, Elections, and Urban Affairs (SC-LEUA)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

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Unemployment Insurance Advisory Council
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State of Wisconsin
Department of Workforce Development
Jim Doyle, Governor
Roberta Gassman, Secretary
Hal Bergan, Division Administrator

October 1, 2009

To: Unemployment Insurance Advisory Council Members

From: Daniel J. LaRocque
Chair, Unemployment Insurance Advisory Council

Re: Meeting October 5, 2009

The next meeting of the Advisory Council is scheduled for Monday, October 5, 2009 at the offices of:

Offices of the State of Wisconsin Investment Board
Room 226 (Board Room)
121 East Wilson Street
Madison, Wisconsin

Parking is available across the street from the DOA building at the "Government East" parking facility: enter from Wilson Street or from Pinckney Street (between Wilson and Doty Streets).

The meeting agenda and other items for your review are enclosed. Please note that the draft UI bill contains highlighted portions to indicate the provisions that have **not** been approved by you.

The time remaining to introduce a bill is limited. The remaining 2009 Legislative floor period is October 20 to November 5.

If you have any questions about any agenda item or about the enclosures with this memo, please let me know as soon as you can so that we can be prepared for a vote on October 5.

Also, please continue to hold Wednesday, October 21 for a Council meeting and bring your calendars in case there is a need to modify our meeting schedule.

I look forward to seeing you Monday.

Materials for the October 5, 2009 Meeting of the Unemployment Insurance Advisory Council

- Meeting Agenda
- Minutes of the September 22, 2009 Meeting
- Summary and Status of Department Proposals in 2009
- UI Bill: LRB Draft 093069/6
- Summary of Department's Proposed Changes and Draft Statutory Language for D09-22 Harmonize Approved Training and Extended Training
- Draft language re: proposal to exclude from "employment" services performed as mystery shoppers
- Department Comment on Proposal to Exclude Mystery Shopper Services from the Definition of "Employment"

NOTICE OF MEETING

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Council Members: Please bring your calendars to schedule future meetings.

Council Web Site: <http://dwd.wisconsin.gov/uibola/uiac/>

MEETING

Date: Monday, October 5, 2009
Time: 9:30 a.m.
Place: Offices of the State of Wisconsin Investment Board
Room 226 (Board Room)
121 East Wilson Street
Madison, Wisconsin

AGENDA

1. Opening remarks – Hal Bergan

ACTION ITEMS

2. Minutes of Meeting September 22, 2009 (blue)
3. Next steps to address Reserve Fund solvency
4. Proposal to modify reduction of benefits for receipt of pension payments
5. Advisory Council Committee Recommendations Regarding Definition of "Employee"
 - a. Improve seven-of-ten test for "employee"
 - b. Repeal DWD 105 (Truckers)
 - c. Repeal DWD 107 (Loggers)
6. Advisory Council Committee Recommendations Regarding Definition of "Employment"
 - a. Exclude from "employment" personal care services for family
 - b. Review mystery shoppers
 - c. Review writers and news reporters

7. Department proposals for changes to the unemployment insurance law, Wis. Stat. Chapter 108, presented at previous meetings
8. UI Bill draft: LRB 09-3069/6
9. Department proposal to revise DWD 128, Able to Work and Available for Work
10. Department proposal to revise DWD 129, Benefit Claiming Procedures

INFORMATION

11. Letters to the Council (white)
- ❖ The Council may not address all agenda items or follow the agenda order.
 - ❖ The Council may take up action items at a time other than that listed.
 - ❖ The Council may discuss other items, including those on any attached lists.
 - ❖ ***The labor members and/or the management members of the Council may go into closed session at any time during the meeting to deliberate any matter for potential action and/or items posted in this agenda, pursuant to sec. 19.85(1)(ee), Stats.***

Some or all of the Council members may attend the meeting by telephone. This location is handicap accessible. If you have other special needs (such as an interpreter or written materials in large print), please contact Robin Gallagher, Phone: (608) 267-1405, Unemployment Insurance Division, Bureau of Legal Affairs, P.O. Box 8942, Madison, WI 53708. Hearing and speech impaired callers may reach us at the above phone number through WI TRS (or TDD/Voice Relay 1-800-947-3529.)

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL MEETING

Tuesday, September 22, 2009 – 9:30 A.M.

Wisconsin Department of Administration

St. Croix Room

101 East Wilson Street

Madison, Wisconsin

Individuals Present:

Management: James Buchen, Dan Petersen, Susan Haine, Ed Lump, and Earl Gustafson

Labor: Phil Neuenfeldt, Dennis Penkalski, Anthony Rainey, and Sally Feistel

Chair: Dan LaRocque

Department staff: Hal Bergan, Andy Reid, Tracey Schwalbe, Tom McHugh, Troy Sterr, Pam James, Amy Banicki, Carla Breber, Jason Schunk, Dick Tillema, Mary Pronschinske, John Zwickey, Jess Erickson.

Others present: Jason Vick (Representative Mark Honadel), John Metcalf (WI Manufacturers and Commerce), Xiaochun Ye (WMC), Michael Metz (WI Independent Businesses), Tom Fonfara (DeWitt Ross), Tom Howells (Wisconsin Motor Carriers Assoc.), Tony Langenohl (Capital Consultants Inc. for Great Lakes Timber Producers Association).

MINUTES

Mr. LaRocque calls the meeting to order at 9:35 a.m.

1. Opening Remarks – Hal Bergan

Mr. Bergan discusses current federal legislation. HR 3548 to augment EUC benefits for up to 13 weeks will be voted on by the House today. HR 3548 will increase total benefits for some recipients to 92 weeks. The extension will not apply to all states, but to states with a seasonally adjusted total unemployment rate of 8.5%. This includes Wisconsin and about 27 other states. The bill does not remove the EUC sunset at the end of this year; nor does it extend any provisions of the federal Recovery Act. The Recovery Act covers interest charged on money borrowed by states for 2009 and 2010. Also, the Recovery Act provided for Federal Additional Compensation (FAC) of \$25 for all claimants through 2009. FAC and other federal extensions and the federal government's 100% payment of extended benefits will sunset at the end of this year. Mr. Bergan has talked with DOL. To extend all of these provisions through 2010 would cost about \$70 billion. Congress might extend these provisions for 6 months, rather than a full year, to limit the cost of the extensions. The federal unemployment trust funds are tapped out and the funding source now is general treasury.

In operations we are keeping up with initial claims. People are getting into the system. For regular UI, last week compared with the same week last year our initial claims were up 74%. At this time last year we started to see the spike in claims. It continues to be an extraordinary level of claims. The 74% is still a high number, as it is compared to a high base of claims last year.

The inquiry line continues to be a challenge. This is a primary focus of our attention. Many calls are from people with pending issues in adjudication. The strategy is two-fold. We want to address the source of the calls so the calls are minimized and improve our capability to respond to the calls. Although the drop rate is higher than we would like, we have many repeat callers. People call 4 or 5 times before getting through. There will be a news story today after the House acts on the benefit extension bill (HR 3548), so our inquiry line will light up tomorrow.

We are in the process of interviewing 39 new adjudicators and 35 new claims specialists to deal with winter workload. They are project positions, but adjudicators will likely longer. We are sending out about 192,000 checks per week and running 5 programs. Basic UI is tracking down a little. EUC benefits are tracking up a little and EB is holding steady. There is no end in sight to the increased workload.

Question (Buchen): Is the decline in numbers for regular UI because people are exhausting benefits or is it because of lower initial claims?

Mr. Bergan responds that the initial claims are down a little, but this is the low season for claims.

Question (Penkalski): Has the average amount of the benefit check gone up or down?

Mr. Bergan responds that with the FAC of \$25 check amounts are up, but otherwise the average check is not up or down much. The 2009 benefit increase (\$8/week) was modest. Nationally, duration of unemployment is lengthening.

Twenty-two states are borrowing from the federal government. The total borrowed nationwide is about \$15 billion. That will increase as we enter the season when claims go up and revenues will be low. DOL projects borrowing will be about \$90 billion by the time the recession is over. This does not account for changes states might make in their revenue systems. DOL does not have a strategy yet but they know the circumstances are tough and will get worse through 2013.

2. UI Treasurer's Financial Statements

Tom McHugh, Treasurer of the UI Reserve Trust Fund, handed out the financial statements with line items identified. Page 1 is the balance sheet. Letter A shows the trust fund federal loan balance is \$569 million. We did not have to borrow for a while because we had second quarter receipts and received the UI modernization money. Letter B shows the reserve fund balance with \$154 million being the balance of all employer accounts. Page 2 shows receipts and disbursements. Letter A shows receipts year-to-date of \$541 million. It is less than last year of \$542 million; despite the change in the taxable wage base, we took in less money. Gross wages are down about 8% compared to last year. Taxable payroll is up 2.28%.

Question (Buchen): If taxable payroll is up, but collections are down, does this mean people are going down in the rate schedule?

Mr. Tillema indicates that this may be a shift in which employers are paying. Total payroll has dropped by about \$2 billion and 85% of that is in manufacturing, construction and that segment of support that provides (temporary help to manufacturing). Those were generally higher taxable payrolls. Those were employers that would pay at higher rates and typically are employers that would have payroll at or above wage base. We may get more collections from lower wage employers in the third quarter.

Comment (Buchen): It sounds like there are disproportionately larger reductions in workforce in people at higher end of the tax schedule.

Question (Petersen): Is this also affected by the tax deferral?

Mr. McHugh indicates that for the first quarter there were only 500 accounts that deferred about \$9.6 million. Deferrals as of August 31 were \$3.4 million for 304 accounts. We liberalized who can take deferrals so we expected this number to be bigger. Federal program receipts on page 2 are \$768 million, compared to \$47 million in the prior year. The footnote B shows that we did get the modernization funds of \$134 million in June and August. Overpayment collections are up because benefits payments are up. Letter D shows the federal loans taken to date which are \$805 million, but we paid back \$236 million of that with first quarter contributions. Letter E shows that charges to taxable employers this year have been \$1.2 billion, compared to \$567 million the prior year. Charges to the balancing account for quits is shown on Letter F of \$128 million. This is up quite a bit. Letter G shows the various federal extended benefit programs of EUC of \$201 million, the \$25 FAC of \$26 million, and the Extended Benefits of \$381 million. The Extended Benefit amount is the one that employers would have to pay 50% of if not for the full federal funding through 2009. Mr. Bergan indicates that the figures identified by Letter A show the shift from the regular tax rate to the solvency tax made in the last bill.

Comment (Buchen): In the long-term that shift will produce higher taxes because employers are not getting as much in their accounts.

Question (Rainey): Why are TRA payments down compared to last year?

Jason Schunk, Bureau of Benefits, indicates that this is because TRA is being paid after all other benefit extensions are paid.

Question (Buchen): Which type of payments ordinarily would be paid 50% by the states?

Hal indicates it is extended benefits.

Question (Haine): If Congress passes the benefit extension in the bill, would it be a sixth benefit program that the department would have to run?

Mr. Bergan responds affirmatively. Because it is an extension, it is a little easier to do. But generally, shifting from one program to another is difficult administratively.

Mr. McHugh indicates that page 3 shows the UI modernization funds we received in June and August. Letter B shows the negative balance in the balancing account. In October we will run the new rates and do the 10% write off. Usually the write off is about \$198 million; this year we anticipate that the write off will be \$404 million. When the October tax rates come out, there will be another \$400 million on the negative balance figure, so that will be a negative \$1 billion in the balancing account. Last year there were 37,832 employers with a rate increase. This year the number of employers with an increase will be more than double last year's number.

3. Unemployment Reserve Fund

Mr. Bergan refers to handouts containing a forecast for the reserve fund. Our closing balance at for 2009 is projected to be a negative \$984 million, and in 2010 a negative \$2.2 billion. The negative balance continues to grow in 2011 to \$2.7 billion. It is projected to go down in 2012. In 2013, the fund is projected to have a negative \$2.3 billion. In 2013, the projected taxes and revenues will be going up and our benefit payments will be going down. These projections are based on the most recent DOR forecast in June. The further out the projection, the less dependable are the numbers. Overall, the projection is helpful to understand the problem. When 2013 comes, some of the reduction comes from reducing the FUTA tax credit. That will cause taxes paid by employers to repay the loan. Page 2 shows how data has changed with the different forecasts. We are at our worst in 2011, but it is not a dramatic recovery from there.

Question (Buchen): The projections show that the worst situation is 2011. This must be based on the expectation that unemployment will rise though 2010, correct?

Mr. Bergan indicates that it is less than that we will start 2010 at a higher level than 2009. We hope that unemployment will start to level out. The consensus of the forecasters seems to be that unemployment will improve slowly. The difference between 2009 and 2010 is really a reflection of where we start in deficit in 2010. The difference in the unemployment rate from 6% to 9% is really a 50% increase for us in what we pay out in benefits. We can hope things get better, but we need to plan with these figures in mind.

Question (Neuenfeldt): Are you tracking the numbers of people that "leave" unemployment (and thus are not counted among the unemployed) because of obtaining employment rather than just running out of benefits?

Mr. Bergan indicates that we do not know why people stop claiming benefits. Some are no longer eligible. Various circumstances and issues may cause them to become ineligible or to stop claiming. Claimants exhaust their benefits at different points. About 10% of people exhaust at 26 weeks because they are not eligible for the benefit extensions. The department has provided charts in the past to the Council showing how many are participating in each program. Relatively few people go through the full 79 weeks.

Question (Buchen): If a claimant has dropped out because of an eligibility issue, would the department have a record of how many of those people there are?

Mr. Bergan indicates that by far the largest factor from what we can tell is that they are returning to employment. It might not be the same as they had before. They may be returning at a lower rate or to part-time work.

Comment (Neuenfeldt): So these figures show that this is all a result of the jobless economic recovery. There may be a stock market recovery. On the bottom end, however, people are working at the types of jobs left behind. This is a consequence of years of outsourcing. When things are purchased offshore, that's where jobs are created, not here.

Comment (Buchen): If you look at the output of American manufacturing, it has never declined substantially. We just make more stuff with fewer people all the time. The Federal Reserve analyzed the last few recessions. Each recession seems to produce a slower rebound in employment. The conclusion was that employers tend to downsize and are reluctant to hire back. They use more automation, etc. Each recession seems to have a slower return to previous levels of employment. It is not good news, but it is due in part to efforts to increase productivity.

Comment (Neuenfeldt): You cannot ignore the hundreds of thousands of jobs that have left the country.

Comment (Buchen): Because there are jobs in another country does not necessarily mean that jobs are reduced in America. It is not that no jobs are lost, but we are still the largest exporting country in the world.

Comment (Neuenfeldt): He has reviewed dislocated worker records and the firms certified because the jobs are moved overseas. We have the largest trade deficit in the world.

Comment (Gustafson): Mr. Gustafson would be interested in reading studies about what percentage of jobs have been outsourced, how many workers were retrained, and the net impact of that. He has heard anecdotes. Economists are suggesting a possible "double-dip" recession.

Comment (Neuenfeldt): DWD can give a list of all of the jobs that have been Trade Act certified that have moved. General economic indicators show earning power of working families. If you review those in the broader economy, you can draw your own conclusions.

(Question) Lump: The projections assume there are no changes in law. As a council, we can affect the outcome based on benefits and taxes, correct?

Mr. Bergan indicates that this is correct. He refers to his handout showing Employer Accounts – Revenue and Expenditures and Solvency Taxes and Charges. Since 2001, there has been a pattern that in most years we ran a deficit when subtracting net charges from the taxes received. In a recession it is a substantial deficit. The number through 7-31-09 will change because we know what the write-off will be (\$404 million). Over the long term, both elements of our system, i.e., the basic and solvency taxes have been out of balance over the last 7 or 8 years. It is

important for us to come up with some phased steps over the next couple of years that would put both of these systems in balance. We would be able to cover charges to the balancing account and basic taxes to cover benefits paid by those employers. It is a two-pronged task. DOL experts on revenue have a good perspective of state systems and the factors in maintaining solvency. Solvency is a greater challenge in some states. We should consider those things. We need to get the charging in balance and develop a strategy to pay off a deficit.

Question (Neuenfeldt): Are the states that are borrowing going to look to the federal government for some relief? Are there discussions going on and who is talking to the feds?

Mr. Bergan indicates that there are other states similarly situated. They are at an early stage. Debts are similarly large compared to their economies. Federal relief is possible down the road, which likely would depend on the solvency of the individual state's system.

4. Minutes of Meeting September 1, 2009

Motion (Lump), seconded (Penkalski), to approve minutes of September 1, 2009, passes 9-0.

5. Advisory Council Committee Recommendations Regarding Definition of "Employee"

- a. Improve seven-of-ten test for "employee"**
- b. Repeal DWD 105 (Truckers)**
- c. Repeal DWD 107 (Loggers)**

and

6. Advisory Council Committee Recommendations Regarding Definition of "Employment"

- a. Exclude from "employment" personal care services for family**
- b. Review mystery shoppers**
- c. Review writers and news reporters**

Mr. LaRocque indicates that the "employee" and "employment" definitions are on the agenda for discussion and action by the Council.

Agenda item number 5.a. (Improve seven-of-ten test for "employee") is fundamental to the UI program. The UI Advisory Council's Committee made the proposal to improve the definition. For items 5.b. (Repeal DWD 105, the rules to determine whether a trucker is an employee) and item 5.c. (Repeal DWD 107, the rules to determine whether a logger is an employee), industry representatives wish to have more input on the Committee's recommendations. We can accommodate that input.

Agenda item 6.a. (Exclude from "employment" personal care services for family members) is a recommendation by the Committee.

Item 6.b. (Review mystery shoppers) is a topic for Council consideration. Prior to the September 1 meeting, the department provided a two-page summary of the department's view of the

proposal by the mystery shopper industry. A mystery shopper is someone hired to go into a retail business and report back as to service and quality without the staff in the store knowing.

Regarding item 6.c. (Review writers and news reporters), Mr. LaRocque spoke with Jeff Mayers of Wispolitics.com regarding writers and news reporters. The meeting packet delivered to the Council for today's meeting includes an exchange of email with Mr. Mayers regarding the conversation.

Question (Lump): Since the Committee met and made recommendations regarding the regulations applying to truckers and loggers, there has been some testimony received by the Council and some conversations. What is the status of this in the department's eyes? This may be more complicated than the Committee originally thought.

Mr. LaRocque indicates that it is the department's perspective that rules DWD 105 and DWD 107 are flawed and should be changed. The trucking and logging industry associations have made the point that we ought to have more input from them before repealing the rules. He is willing to schedule meetings to get their input.

Comment (Gustafson): He has been in contact with the loggers' association. They would like to see action on DWD 107 tabled and have the opportunity to work on it. They understand the department's perspective, but there are also unique aspects of the work in that sector. If we move forward on other aspects now, it would be helpful not to move forward on DWD 107.

Mr. LaRocque indicates that it is up to the Council to decide how to proceed. Improving the seven-of-ten test is more fundamental and important than the other items and could be separated.

Comment (Lump): As long as the door is open to discuss this with other industries, the department should meet with industries before we meet again in couple of weeks and see if any progress has been made. He is hesitant to approve these items with the possibility of negotiations going on. For items 5.b. and 5.c., the Committee tried to reach out to people, but could have been more aggressive in doing that.

Question (Neuenfeldt): What is the legislative strategy for the bill, one bill or two bills? What is the timeline?

Mr. LaRocque indicates that there is a bill draft done by the LRB. That has been distributed to the Council. The legislative floor period ends November 5. The department asked the LRB to draft all of the provisions presented to the Council, including those not yet approved. The department is prepared to go ahead with the bill.

Comment (Neuenfeldt): Questions whether the Council should put a bill forward that has some changes but does not deal with solvency and other issues. Would the Council be better off waiting for total package?

Comment (Buchen): If you look at the magnitude of the problem, the solutions become daunting and are going to be controversial. On the employer side, there will be tax increases which will

be hard in this economy. The situation has to be addressed, but the process and outcome is fuzzy now. We have recently been made aware of the magnitude of the problem. We could take care of uncontroversial issues, and that bill can go through the Legislature. We can be prepared to respond to questions, but we cannot get the other things resolved by the end of the floor period.

Comment (Lump): Suggests that we hold the whole seven-of-ten test for a few weeks. It is not crying out to be fixed. We can see some language from the department regarding mystery shoppers and writers that we could consider.

Mr. LaRocque indicates the department will provide some write up on mystery shoppers. Freelance writers may be more difficult. Mr. Mayers indicated it would be hard to justify on a policy basis excluding writers working for the news media alone.

Question (Penkalski): Does the department have suggestions about what period of time will be needed to pay this off?

Mr. Bergan indicates that he has not done that yet because he needed to hear from the Council what it wants to do. Generally, we should phase something in over 2 or 3 years. The reason to do it sooner is to drive the number down and the overall debt will be lower. There is urgency about it. Then we should deal with the solvency part and see what new numbers would generate on the projections, and then develop a separate strategy for whatever debt is left.

Question (Gustafson): The Council has been speaking about this since last spring when we were trying to make sure we had full access to federal benefits. It should not come as a surprise.

Mr. Bergan notes that people know there are issues to be addressed. The department wanted some guidance from the Council. There is work to do.

Comment (Buchen): If we approve a bill with these changes, we would be in a position to talk with legislators about the other issues and explain that we are working on it.

Comment (Penkalski): It may be more appropriate to at least take a small step forward now.

Comment (Gustafson): They should understand that the Department and the Council have not been dragging our feet. We were waiting for some good numbers.

Comment (Buchen): We need to determine the amount that allows you to declare the system solvent in the long term. Then we need to determine how to share the pain here. There are places in the system where we spend money that is not absolutely essential to the fundamental purpose of keeping people in their homes and feeding families when they are unemployed. It cannot all be on the tax side; it is not going to happen. Whatever the number is, it will primarily come out of higher taxes, but there are other issues on benefits side that need to be examined.

Comment (Neuenfeldt): He is happy to work on two bills, but it would be good to have some feedback about how the Legislature might perceive the issues and introducing two bills. It is a matter of legitimacy of the Council process.

Comment (Haine): We have a bill with some typical UI fixes. The Council is aware of bigger issues and will deal with those in a second bill.

Comment (Lump): He was here in the 1980s. The Council did not come up with a solution and the Legislature had to take charge and made changes that were not popular with anyone.

Comment (Buchen): At that time, the Council's procedures required unanimity and they could not get it. There were massive tax hikes and benefit cuts. It worked, and got the system back to solvency, but it was modified shortly thereafter because it generated more money than we needed at the time.

Comment (Haine): The Council wants to be out in front. The Council is aware of the trust fund issue, but may not have a solution yet in the bill this year. We could do the other things in a bill.

Comment (Buchen): We need to find out from the legislators if they will be ok with two bills. We do not know yet because we have not asked them yet. It may be premature to set a strategy.

Mr. LaRocque indicates that if the Council wants to do a bill this fall, the bill would need to be done on October 5. The Council has the draft bill. He can take input between meetings to make progress on the bill before then. In the draft, the highlighted language shows the provisions that are not yet approved by the Council.

Comment (Neuenfeldt): They will be letting the legislative leadership know the projected deficits. It would also be helpful to let them know that this is not just Wisconsin, but how many other states are in this position. Also, they should know that it is possible that there may be some relief from feds that would come later rather than sooner; and that we need to deal with solvency. We can tell them there are some issues that can move quickly, and ask if we should do two bills. The leadership may want a total package; we will need to see what they say.

Comment (Gustafson): A further point is that the Council has been on top of this but there was uncertainty of the depth and duration of the recession until we got some strong numbers. Also, there is the possibility of the double dip which adds another twist.

Comment (Buchen): The Council has not been blind to this. The last bill was an attempt to address this with increasing the taxable wage base and adjusting solvency taxes. The situation was not as dire when we were looking at the situation as it is now.

Comment (Neuenfeldt): People will understand that the Council has been on top of this, but suggests that they may wonder about how long it will take to come up with solutions.

Mr. Bergan indicates that for the solvency side, most of the potential steps to address this are not that complicated, we just need to decide to do it. In the 1980s we created a tax table that was a little unusual. We should amend that tax table to be more consistent and understandable.

Comment (Neuenfeldt): We should see what the feds are recommending, so we are prepared to take advantage of any federal relief.

Comment (Gustafson): The feds seem to think that states cannot have a large enough rainy day fund; we have seen this from them in the past. When we had \$1.6 billion in the account, they still said it was not high enough. It turns out they were right, but not for the right reasons.

Mr. Bergan indicates that he suggested that DOL change their standard as to what is important. The feds have always focused on the balance in the reserve account. He thinks it is wiser to deal with internal solvency of the account than the balance, which is a different thing. They were responsive to that. The kinds of balances they have urged over the years are very high. There are other ways to judge the solvency of your system than the balance in the account.

Comment (Buchen): We may need a program that is more reflective of the unemployment rate and triggers. We need to look at the demands on the system and the lags. There is another way to do this.

Comment (Neuenfeldt): The Council may need to caucus to digest what they have heard. In terms of one or two bills, between now and next week Mr. Bergan should communicate with the legislative leadership so we can make a decision on October 5 whether we have two bills or one. Labor and management can communicate as well. Eventually we need to communicate with the whole Legislature as well.

9. Department proposal D09-22 – Amend Approved Training and Extended Training

Comment (Neuenfeldt): He does not like the limit of “high demand occupation” for approved training. Not everyone is in a position to train for those occupations. There also can be long waiting lists. That term raises concerns because there may be few high demand occupations.

Tracey Schwalbe provides an overview of the department proposal. When workers are in regular approved training (AT), they do not have to meet some of the requirements for benefits that regular claimants have to meet. They do not have to do a work search, they do not have to be able and available for work, and they can refuse suitable work while in the training. Claimants in TRA or dislocated worker programs also can leave unsuitable work to enter training. Claimants are eligible for up to 26 weeks of benefits while in approved training. With Act 11, we added additional benefits while in Extended Training (ET) of up to an additional 26 weeks. Now someone can be eligible for up to 52 weeks of benefits while in AT/ET. The two programs are somewhat different as currently drafted. As the department has been working on the implementation plan and programming for ET, the department came up with ways we could harmonize the laws and make it easier on people to understand the programs and make it a seamless process for claimants in training. We do not want claimants to be frustrated after 26 weeks that they cannot continue to receive benefits because of the changed requirements for ET; and we do not want to have to investigate the claimant’s training again after 26 weeks to see if it meets the ET requirements and slow down or stop benefits while we have to do that investigation. We separated the proposal into different the issues. The harmonizing and synchronizing of AT/ET is one part of the proposal. There are also changes that must be made to

the current law that are required for federal conformity purposes. We separated that out so you can see what absolutely has to be changed from what the department is recommending be changed. There are also some changes to ET that DOL requested we make to clarify those provisions. On the summary page, the harmonizing provisions are identified with the first set of bullet points. The fiscal analysis for each change is broken down and provided in each bullet point. Overall, the harmonizing changes have a balanced effect on the trust fund. One proposed change subtracts about \$1 million in benefits and several other proposed changes together add about \$900,000 in benefits. The total fiscal effect of all of the changes is about \$100,000. Dick Tillema prepared the fiscal analyses and is here to answer any questions on that.

Carla Breber, Bureau of Benefits, presents the AT/ET harmonizing part of the department proposal. First, the department is proposing to eliminate the cutoff date of October 1, 2003 [in Wis. Stat. §108.04(16)(c)], for approved training that is administered by the department. We do not want the artificial date to prevent us from approving some new and innovative programs that are administered by the department. Second, the department proposes to approve all WIA-funded training for AT. All WIA-funded training is approved training for the ET benefits and we want these automatically approved for AT as well. This would allow a seamless transition from AT to ET for many claimants. Third, there is already a requirement for regular AT that requires the department to evaluate the training program and determine whether it will increase the person's opportunities to obtain employment. We would like to replace this language with the phrase currently used for ET benefits that the training is for a "high demand" occupation. They are similar concepts. The proposal would make the terms used consistent. The department can define "high demand." The approved training investigation that the department does today does look at the training. The type of training has to be approved. All Trade Act training and WIA-funded dislocated worker programs are automatically approved training regardless of whether the occupation is "high demand." Also, all department-administered programs as of the October 1, 2003, date are automatically approved regardless of whether the occupation is "high demand." If someone is getting training that is not in one of these programs, the department looks at the program to see if it meets certain requirements, such as if the training is a vocational school, is full-time, etc. We do a complete investigation.

Finally, the department proposes to remove the requirement from ET that the separation must have been from a declining occupation or involuntarily separated from employment as a result of a permanent reduction in operations. This would make ET more similar to AT. These three changes would make a seamless transition from AT to ET so we do not have to re-investigate and delay benefits and possibly deny ET when the person is in the same program and it was approved under AT. The proposal also would allow the department to apply the approved training protections without having to conduct a full able and available investigation. A few changes in the statute would allow the department to make a faster investigation of the issues for someone in approved training. Right now we do a complete able and available investigation before we even look at approved training. We want to streamline this so that if the person is in approved training, we do not need to look at whether they are able and available for work. There is really no need to conduct that investigation; if they are in approved training they do not need to be able and available for work. This will save time and speed the payment of benefits.

Comment (Neuenfeldt): There are approved training providers, and people need to meet the criteria for training. A lot of people come into the system through the dislocated worker program. They go through a case management process where they look at they type of training. It is not a unique UI decision.

Ms. Breber indicates that those things will not change. Someone in a dislocated worker program will still automatically be considered to be in approved training. The department is proposing to broaden this to be more than just the dislocated worker programs, but all WIA-funded programs. Anyone in trade training or a program administered by the department is approved.

Question (Neuenfeldt): Who would you be denying then? Who are the people that make up the \$1 million in benefits that are being lost?

Ms. Breber indicates that there are still a fair number of people in training that is not through one of these programs. They are approved now if the training meets the requirements in the statute. They all may not fall out of the program. Dick Tillema indicates that the people who represent the \$1 million in decreased benefits are those people in the regular approved training, who are not in TRA or WIA dislocated worker or a department-administered program. People in those programs are automatically approved and would not have to meet the "high demand" criterion. The people who would need to show that the training is for a "high demand" occupation for regular AT, would be people who are not in those programs. They may be in any kind of training, such as a fork lift operator, which did not come to the person because of participation in TRA or dislocated worker or a department-administered program. The person just decided they would get training as a fork lift operator while they were unemployed. The latter situation is different from one in which large numbers of people are dislocated or unemployed when a plant closes and the Department goes out to find ways to put them back to work.

Question (Neuenfeldt): If someone is in TRA and wants to be trained as a fork lift operator, that would be ok, but someone who is not in TRA or the other automatically approved programs would not be approved for fork lift operator training?

Ms. Breber responds that this is correct, and this is true today for all approved training. If a case worker decides that some college is appropriate for the person in TRA or dislocated worker, we would automatically approve that but we would not approve the college training for someone just seeking training in college on their own. Automatic approval is dependent on the case worker deciding that this is the right training for this person. This is a line that is already drawn in the statutes. That difference in treatment was created long ago.

Mr. LaRocque indicates that the "high demand" concept came into the law this year (Act 11). We put that in the extended training program provisions. It is there now. People will enter the approved training now without having to meet the "high demand" standard and will find out after 26 weeks that they are not entitled to extended benefits. This will focus them on a high demand occupation so they are more likely to be reemployed and provide the term of benefits needed.

Question (Haine): She understands the need to harmonize the programs so claimants are not confused and the department does not have to reinvestigate. The "high demand" piece is a minimum requirement of the ET but the state can define "high demand." What is the definition?

Mr. LaRocque indicates that the department has had to define this for ET purposes. It encompasses a large percentage of jobs in Wisconsin. Jason Schunk, Bureau of Benefits, indicates that the department has a list from the Department's Office of Economic Advisors with the projections of what occupations Wisconsin will increase in numbers over a ten-year period. The "high demand" jobs are those that have a 10-year projected rate of growth that is greater than average. We took out the jobs that require a bachelor's degree. There were still several hundred (well over 50% of all) job titles that qualify as "high demand."

Comment (Haine): The focus seems to be to direct people to training where they will be able to find a job. We do not want to train people for jobs that are declining. If it covers that many occupations, then that is still broad.

Mr. LaRocque indicates that there is a tradeoff in the proposal. On the one hand, some people will not get benefits valued at \$1 million (if they are not training for a "high demand" job and not in any of the other categories of approved training). On the other hand there are other people who will get benefits that they are not getting now (valued at \$900,000) and there are people who will enter the AT program and not be held up at the stage where they enter the ET benefits.

Mr. Bergan states that there are some reductions, but there are also benefits to more claimants. It is close to a wash in terms of fiscal effect on benefits. The idea of harmonizing and making the program more consistent and more manageable is a very important thing. We are going through the experience now where benefits are being held up because we have an endless list of issues we have to adjudicate. This is exactly where this comes from. Someone was eligible for benefits initially and is not now, then we have to deny and we are investigating. People are left in limbo. Any steps we can take to make this program more understandable and less arbitrary to the people we are trying to serve is very important. From an administrative standpoint, as we are running several programs and trying to get people benefits, there is even more urgency.

Comment (Buchen): The fact that there is fiscal balance in the proposal is absolutely critical.

Question (Petersen): Is it possible that some people in AT would be approved in ET?

Ms. Schwalbe indicates that this is correct if the person also met the separate requirements for ET. This would require the department to investigate after the claimant exhausts AT to see whether the claimant originally left a declining occupation and was training in a high demand job. The person may not meet these requirements and then after receiving 26 weeks of training and benefits would be denied further benefits.

Question (Petersen): Is it possible to change the ET portion to be any AT program without the "high demand" requirement?

Ms. Schwalbe indicates that the state can broaden this to provide ET benefits to anyone under the current language in AT. That would be broader than what the department proposed. We thought the policy of focusing on a high demand job for AT was appropriate.

Comment (Haine): She is concerned about the administrative difficulties and that claimants would be completely confused about why their benefits are being cutoff. She also appreciates the fiscal balance in the proposal. She read the analysis and it was good and would make things more understandable. If "high demand" is defined broadly enough, it should work well.

Mr. LaRocque indicates that the proposal provides balance, does not do any radical changes, but streamlines the programs. There is statutory language on D09-22 in the analysis document the Council received today.

8. Department proposal D09-21 – Authorize Spending of Special Administrative Transfers

Mr. LaRocque indicates that this allows the department to spend the \$9.6 million the department received for UI administration under the RECOVERY ACT.

Motion to approve D09-21 (Buchen), seconded (Neuenfeldt), passed ~~unanimously~~ 9-0.

10. UI Bill: LRB Draft 3069/5

Mr. LaRocque indicates that D09-22 (Harmonize Approved Training and Extended Training) is not in the bill draft.

Motion to meet in closed session

Motion (Buchen), seconded (Neuenfeldt), is passed ~~unanimously~~ 9-0 to go into closed session to consider the department proposals for changes to chapter 108 presented at various meetings to date including D09-22 presented today, and to consider the department's proposals to revise Wisconsin Administrative Code chapters DWD 128 and DWD 129, and to consider the draft bill language in LRB draft 3069/5, pursuant to section 19.85(1)(ee) of the Wisconsin Statutes; and to consider the meeting adjourned without return to open session today. Closed sessions by the management and labor members of the Council, respectively, began at 10:35 p.m.

The next meeting of the Council will be held at the offices of the State of Wisconsin Investment Board (SWIB), 121 East Wilson Street, Madison, WI. Parking is available across the street from SWIB.

The Meeting of the Council adjourned upon the end of closed sessions at 12:45 p.m.

SUMMARY AND STATUS OF DEPARTMENT PROPOSALS IN 2009

Statutory Changes Approved by the Council:

D09-02 Establish Firm Deadline for Voluntary Contributions (*approved by Council 5/28/09*)

Amend Wis. Stat. §108.18(7)(d) to make the timely payment of voluntary contributions provision consistent with the timeliness provision for other employer reports and payments. The proposal eliminates the grace period and the need to maintain envelopes and proof of mailing.

D09-03 Incorporate Requirement that Professional Employer Organizations (PEOs) Register with Department of Regulation & Licensing (*approved by Council 5/28/09*)

Amend §108.02(21e) to include in the definition of "professional employer organization" the requirement that it be registered with the Department of Regulation and Licensing.

D09-05 Clarify that Department is an "Adverse Party" in Employers' Circuit Court Actions to Review Tax Decisions (*approved by Council 5/28/09*)

Amend §108.10(4) to state that the department is an "adverse party" when an employer seeks review in the circuit court of a Labor and Industry Review Commission decision under §108.10(4). Reduce confusion by employers as to which entity must be a named party; reduce risk to employers of technical dismissal of their cases; and assure the department will be afforded an opportunity to defend its determination and affect the judicial development of the unemployment law.

D09-06 Correct Forfeiture Language to Reflect Statutory Penalties (*approved by Council 5/28/09*)

Amend §108.04(11)(be) to remove risk of incorrect interpretations of the provision that establishes benefit forfeitures for concealment (a technical change consistent with the intent of 2007 Act 59).

D09-08 Amend Domestic Abuse Quit Exception (*enacted as part of 2009 Wisconsin Act 11*)

D09-09 Clarify Exceptions for Exclusions from Employment for Indian Tribes (*approved by Council 5/28/09*)

Amend two subdivisions of §108.02(15)(f) to clarify that the option for tribes to exclude certain tribal elected officials and policymakers and advisors from coverage is made under tribal not state law, and that tribal legislative bodies and judiciaries are not political subdivisions of the state. Amend §108.02(15)(g)1. to clarify that individuals receiving work relief or work training programs funded wholly by tribes is excluded from employment unless a tribe elects otherwise.

D09-16 Amend Special Assessment for Interest to Allow Unused Balance to Revert to Reserve Fund (*approved by Council 5/28/09*)

Amend §§108.19(1m) and 108.20(3) to credit the balancing account with any amounts from the special assessment that exceed interest payments on federal loans.

D09-17 Enable Intercept of Federal Tax Refunds for UI Fraud (approved by Council 5/28/09)

Amend §108.22(8) to enable the intercept of federal tax refunds to collect UI benefit overpayments in fraud cases and to permit the U.S. Department of Treasury to deduct fees from intercepted amounts to cover the administrative costs of the intercept program.

D09-21 Authorize Spending of Special Administrative Transfers (approved by Council 09/22/09)

Authorize spending federal administrative funds received for UI Modernization on any or all of the four federally permitted purposes of the funds:

- Administration of state law to carry out UI modernization;
- Improved outreach to individuals potentially eligible for benefits due to UI modernization;
- Improvement of UI benefit and tax operations; and
- Staff-assisted reemployment services for UI claimants.

Statutory Changes Not Yet Approved by the Council:

D09-04 Protect Claimants and Witnesses in UI Cases from Retaliation (presented to Council on 01/29/09)

Strengthen protection of claimants and create protection of witnesses in unemployment insurance cases from retaliation by employers for asserting their rights or appearing as a witness in an unemployment hearing; and increase penalties.

D09-10 Amend Disqualification for Full-Time Work with 80% Liable Employer: Reduce "full-time" from 35 to 32 Hours (presented to Council on 02/26/09)

When claimant works for and/or receives payment from an employer who paid at least 80% of the wages in his or her base period, §108.05(3)(b) disqualifies the claimant from receiving benefits in any week that the wages and/or payment is for full-time work at a rate of pay that meets certain criteria. The proposal would provide that "full-time" in §108.05(3)(b) means 32 hours.

D09-12 Amend Exceptions to Quit Disqualifications: Change Thresholds to 32 Hours (presented to Council on 02/26/09)

Two quit exceptions, §§108.04(7)(k) and 108.04(7)(o), apply where claimant works two jobs concurrently. Section 108.04(7)(k) allows claimant to quit a job providing up to 30 hours per week without disqualification where claimant has lost a full-time job and it is "economically unfeasible" to continue the 30-hour per week work. Section 108.04(7)(o) allows a claimant to quit a job where claimant quits before receiving notice of termination from a 30-hour per week job. The proposal would change the 30-hour threshold to 32 hours in each provision.

D09-13 Treat Bonus Payments as "Earned" When Paid (presented to Council on 03/26/09)

Amend §108.05 to provide that for purposes of calculating UI benefits a bonus payment is considered "earned" in the week in which the bonus is paid by the employer.

D09-20 Improve Definition of “Employee” and Exclude from “Employment” Personal Care Services for Family Members (*recommended by Council Committee to Review UI Definition of “Employee”*)

Improve the seven-of-ten test for “employee” that governs employee status for most for-profit employers. Repeal special rules for truckers (DWD 105) and loggers (DWD 107). Exclude personal care services from “employment” when such services are provided by an individual directly to a family member.

D09-22 Amend Approved Training and Extended Training (*presented to Council September 22*)

Harmonize requirements for benefits under approved training and extended training; assure correct interpretation and application and federal conformity; and shift charges to balancing account.

Rule Changes Not Yet Approved by the Council:

Wis. Admin. Code Chapter DWD 128, Able to Work and Available for Work (*draft proposal “091409rev” delivered to Council by mail September 15 for meeting of September 22, 2009*)

Amend the test for whether a claimant is “able to work.” Claimant must show attachment to the labor market by being able to do work. Ability to perform only a single job is not attachment to the labor market. Current rule implies that a single job is sufficient by testing for ability to perform “any” suitable work. Delete the word “any.” Also delete provision in the current rule that implies that a claimant unable to work may be considered “able” if she or he “could be qualified . . . with additional training.” These amendments will restore the focus on the factors most relevant to physical restrictions and residual capacity and assure that there is a genuine attachment to the labor market.

Current rule requires all claimants to be available for 32 hours work in a week. Where physical or psychological restrictions limit the number of hours an individual can work to less than 32 hours in a week, she or he will not be regarded as “unavailable” for work solely because not able to work 32 hours provided she or he is available to work the number of hours she or he is able.

Amend provision on available for work to protect claimant from disqualifications due to care of immediate family member to the extent intended by UI Modernization provision in 2009 Wis. Act 11.

Wis. Admin. Code Chapter DWD 129, Benefit Claiming Procedures (*presented to Council on 02/26/09*)

The language of the rule for filing initial, continued and resumed claims invites an interpretation that is inconsistent with the intent of the rule. This interpretation would allow claimants to make claims for weeks when the claims have become inactive and ineligible for benefits. The proposed rule will not change how claims are filed or determined by the department but it will reinforce requirements for timeliness of initial, continuing and resumed claims and eliminate risk of the unintended interpretation. See department analysis of proposal for examples.

Also §DWD 129.05 is amended to authorize payment of benefits by debit cards in addition to payment methods currently permitted: check and direct deposit.

D09-22 Harmonize Approved Training and Extended Training

Summary of Department's Proposed Changes

If a claimant is not available for full-time work, unemployment benefits are suspended. But while enrolled in training, a claimant may qualify for benefits despite unavailability for work, and be excused from performing a work search and accepting job offers. Unemployment benefits received while in training are called "Approved Training" benefits (or "AT").

Approved Training benefits are limited to the 26-week entitlement for regular unemployment benefits. 2009 Wis. Act 11 created "extended" benefits for claimants enrolled in training – an additional entitlement of up to 26 weeks ("extended training" or "ET").

AT and ET have differing requirements, although they are similar. The Department's proposal would harmonize the requirements for AT and ET benefits:

- Extend AT benefits by eliminating the cutoff date of October 1, 2003 for Department-administered training. Increases benefits by approximately \$0.3 million.
- Extend AT benefits to all WIA-funded training, not just dislocated worker programs. Increases benefits by \$0.6 million.
- Limit AT benefits to "[training for] a high demand occupation," replacing current standard: "[training] to increase the individual's opportunity to obtain employment." Decreases benefits by approximately \$1.0 million.
- Remove requirement in ET of separation from a declining occupation or involuntarily separated from employment as a result of a permanent reduction in operations. Likely no significant fiscal effect, based on studies of AT claimant qualifications.
- Shift charges for AT from employer accounts to the balancing account, reducing charges to employers, and increasing noncharges from \$1.1 million to \$12.9 million.

Changes to assure federal UI law conformity and compliance:

- Protect claimants from benefit denials when a claimant quits work engaged in temporarily during a break in training or a delay in starting training; and when a claimant quits on-the-job training not later than 30 days after commencing training because the training did not meet the requirements of the Trade Act. Required by 2009 Trade Act amendments. No significant fiscal effect is anticipated.
- Clarify:
 - the effect on AT eligibility of enrollment in TAA training.
 - that WIA-funded training qualifies a claimant for ET.
 - that claimants may be eligible for up to 26 weeks of ET benefits.

Reasons for changes: AT and ET promote the same policy objectives. Differing criteria for AT and ET require undue administration and lead to confusion, disappointment and interruptions in training when benefits end unexpectedly. Uniform requirements for how school attendance affects unemployment benefits are more easily communicated and understood by customers than the current law allows and better justified by policy.

D09-22 Draft Language for Approved Training Provisions

Repeal and recreate s. 108.04(16) to read as follows:

(16) APPROVED TRAINING. (a) The following training will be considered approved training:

1. Vocational or basic education that is a prerequisite to such training, provided:
 - a. The training is for a high demand occupation as determined by the department;
 - b. The training is given by a school established under s. 38.02 or other training institution approved by the department;
 - c. The individual is enrolled full time as determined by the training institution;
 - d. The course does not grant substantial credit leading to a bachelor's or higher degree; and
 - e. The individual is attending regularly and making satisfactory progress in the course. The department may require the training institution to file a certification showing the individual's attendance and progress.
2. Programs administered by the department for the training of unemployed workers, other than the Youth Apprenticeship Program under s. 106.13.
3. Training under 19USC 2296 (Trade Act).
4. Training approved under 29 USC 2822 (Workforce Investment Act).

(b) The department shall not apply any benefit reduction or disqualification under sub. (1) (a) [missed work available because the employee was not able and available to work], or (8) [refused suitable work] or s. 108.141 (3g) (a) or (c) [refused suitable work and work search while on extended benefits] to any otherwise eligible individual for any week as a result of the individual's enrollment in a course of approved training under par. (a).

(c) The department shall not apply any benefit reduction or disqualification under sub. (1) (b) [work is suspended because employee is not able and available to work or is on leave of absence], (7) (c) [meets quit exception for health reasons but the employee is not able and available to work], or (8) (e) [refused suitable work with good cause but the employee is not able and available to work] or s. 108.141 (3g) (d) [employee quits or incurs a disciplinary suspension for good cause while on extended benefits] that is not the result of approved training under par. (a) while an individual is enrolled in the approved training under par. (a). [These benefit reductions and disqualifications are delayed and will apply to weeks when the employee is no longer enrolled in approved training under par. (a).]

- (d) 1. If an individual is enrolled in approved training under par. (a) 3. or 4., the department also shall not deny benefits under sub. (7) as a result of the individual's leaving unsuitable work to enter or continue such training, as a result of the individual's leaving work that the individual engaged in on a temporary basis during a break in the training or a delay in the commencement of the training, or because the individual left on-the-job training not later than 30 days after commencing the training because the training did not meet the requirements of sec. 236(c)(1)(B) of the Trade Act of 1974 as amended.
2. The requalifying requirements under subs. (7) and (8) do not apply while the individual is enrolled in approved training under par. (a) 3. or 4.

(e) The department shall charge to the fund's balancing account the cost of benefits paid to an individual that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if the individual receives benefits based on the application of par. (b), (c), or (d).

Amend s. 108.06(7):**108.06(7) (a)** In this subsection:

1. "Applicable benefit year" means, with respect to a claimant, the claimant's current benefit year if at the time an initial claim for benefits under this subsection is filed the claimant has an unexpired benefit year or, in any other case, the claimant's most recent benefit year.
2. "Training program" means any program of a type specified in s. 108.04 (16), and any job training program authorized under the Workforce Investment Act of 1998 (WIA).

(b) Except as provided in pars. (f) and (g), a claimant who is otherwise eligible for benefits and who is currently enrolled in a training program is eligible, while enrolled in that training program, for additional benefits under this subsection provided that the claimant:

1. Has exhausted all rights to regular benefits, Wisconsin supplemental benefits, federal emergency compensation benefits under P.L. 110-252 and P.L. 110-449, as amended, extended benefits under s. 108.141, and the federal trade act of 1974 (P.L. 93-618), or any other similar state or federal program of additional benefits;
2. If not in a current benefit year, has a benefit year that ended no earlier than 52 weeks prior to the week for which the claimant first claims benefits under this subsection;
3. Except as provided in par. (e), is first enrolled in a training program within the claimant's applicable benefit year;
4. Is not receiving similar stipends or other training allowances for nontraining costs;
5. ~~Was separated from employment in a declining occupation or involuntarily separated from employment as a result of a permanent reduction in operations by his or her employing unit, if the separation occurred no earlier than the beginning of the base period for the claimant's applicable benefit year; and~~
6. ~~Is being trained for entry into a high-demand occupation.~~

(c) The weekly benefit rate payable to a claimant under this subsection for a week of total unemployment is an amount equal to the most recent weekly benefit rate in the claimant's applicable benefit year as determined under s. 108.05 (1).

(d) Notwithstanding the benefit entitlement calculation provisions of ss. 108.04 (1) (g) and 108.06 (1), a claimant may receive total benefits under this subsection greater than of up to 26 times the claimant's weekly benefit rate that applied to the claimant's applicable benefit year while enrolled in the training program.

(e) A claimant who is otherwise eligible for benefits under par. (b) and whose applicable benefit year ends in a week in which benefits are payable in this state under s. 108.141 or 108.142, or P.L. 110-252 or P.L. 110-449, as amended, or another similar state or federal program of additional benefits, is also eligible for benefits under this subsection if the claimant is first enrolled in a training program within 52 weeks after the end of the claimant's applicable benefit year.

(f) No benefits may be paid to a claimant under this subsection for weeks beginning more than 52 weeks after the first week for which the claimant received benefits under this subsection.

(g) Except when the result would be inconsistent with the other provisions of this subsection, the provisions of this chapter that apply to claims for, or the payment of, regular benefits apply to claims for, and the payment of, benefits under this subsection.

~~(h) The occupations that qualify as declining or high-demand for purposes of this subsection shall be determined by the department.~~

~~(h)~~ (h) The restrictions on benefit reductions and disqualifications in s. 108.04 (16) apply to a claimant in a training program who is entitled to receive benefits under this subsection; the restrictions on benefit reductions and disqualifications in s. 108.04(16)(d) apply to any job training program authorized under the Workforce Investment Act of 1998 (WIA).

~~(i)~~ (i) The department shall charge benefits paid under this subsection in the same manner as benefits are charged under s. 108.04 (16).

Amend s. 108.04(2)(a) and (d):

(2) GENERAL QUALIFYING REQUIREMENTS. (a) Except as provided in par. (b) and as otherwise expressly provided, a claimant is eligible for benefits as to any given week ~~for which he or she earns no wages only if:~~

1. The individual is able to work and available for work during that week;
2. As of that week, the individual has registered for work; and
3. The individual conducts a reasonable search for suitable work during that week. The search for suitable work must include 2 actions that constitute a reasonable search as prescribed by rule of the department. This subdivision does not apply to an individual if the department determines that the individual is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. In determining whether the individual has a reasonable expectation of reemployment by an employer, the department shall request the employer to verify the individual's employment status and shall also consider other factors, including:
 - a. The history of layoffs and reemployments by the employer;
 - b. Any information that the employer furnished to the individual or the department concerning the individual's anticipated reemployment date; and
 - c. Whether the individual has recall rights with the employer under the terms of any applicable collective bargaining agreement.

* * *

~~(d) A claimant who earns or receives wages for one or more weeks of unemployment may be required, by rule of the department, to comply with the requirements of this subsection in order to be or remain eligible for benefits for any such week. Paragraph (a) does not apply to individuals enrolled in a course of approved training under 108.04(16).~~

* * *

Proposed Changes to s. 108.04(16) [showing tracked changes]:

(16) APPROVED TRAINING. (a) The following training will be considered approved training: ~~The department shall not reduce benefits under sub. (1) (a) 1., or deny benefits under sub. (1) (a) 2., (2) (a) or (d), or (8) or s. 108.141 (3g) to any otherwise eligible individual for any week as a result of the individual's enrollment in a course of vocational training or basic education which is a prerequisite to such training, provided the department determines that:~~

1. Vocational or basic education that is a prerequisite to such training, provided:
 - ~~1. The course is expected to increase the individual's opportunities to obtain employment;~~

- a. The training is for a high demand occupation as determined by the department;
- 2b. The training is given by a school established under s. 38.02 or other training institution approved by the department;
- 3c. The individual is enrolled full time as determined by the training institution;
- 4d. The course does not grant substantial credit leading to a bachelor's or higher degree; and
- 5e. The individual is attending regularly and making satisfactory progress in the course. The department may require the training institution to file a certification showing the individual's attendance and progress.
- 2. Programs administered by the department for the training of unemployed workers, other than the Youth Apprenticeship Program under s. 106.13.
- 3. Training under 19USC 2296 (Trade Act).
- 4. Training approved under 29 USC 2822 (Workforce Investment Act).

(b) The department shall not apply any benefit reduction or disqualification under sub. (1) (a), or (8) or s. 108.141 (3g) (a) or (c) to any otherwise eligible individual for any week as a result of the individual's enrollment in a course of approved training under par. (a).

(bc)2The department shall not apply any benefit reduction or disqualification under sub. (1) (b), (7) (c), or (8) (e) or s. 108.141 (3g) (d) that is not the result of approved training or basic education under par. (a) while an individual is enrolled in a course of the approved training or education that meets the standards specified in under par. (a). The benefit reduction or disqualification will apply to weeks when the employee is not enrolled in approved training under par. (a).

(c) If an individual is enrolled in an a program administered by the department for the training of unemployed workers that was in existence on October 1, 2003, other than the Youth Apprenticeship Program under s. 106.13 or a plan for training of youth approved under 29 USC 2822, then notwithstanding any failure of the program to meet the standards specified in par. (a):

- 1. The department shall not reduce benefits under sub. (1) (a) 1. or deny benefits under sub. (1) (a) 2., (2) (a) or (d), or (8) or s. 108.141 (3g) to an otherwise eligible individual as a result of the individual's enrollment in such training; and
- 2. The department shall not apply any benefit reduction or disqualification under sub. (1) (b), (7) (c), or (8) (e) or s. 108.141 (3g) that is not the result of the training while the individual is enrolled in the training.

(d) 1. If an individual is enrolled in approved training under par. (a) 3. or 4., the department also shall not deny benefits under the plan of any state for training under 19 USC 2296 or a plan for training of dislocated workers approved under 29 USC 2822:

- 1. The department shall not deny benefits under sub. (7) a. as a result of the individual's leaving unsuitable work to enter or continue such training; and as a result of the individual's leaving work that the individual engaged in on a temporary basis during a break in the training or a delay in the commencement of the training; or because the individual left on-the-job training not later than 30 days after commencing the training because the training did not meet the requirements of sec. 236(c)(1)(B) of the Trade Act of 1974 as amended.
- 42. The requalifying requirements under subs. (7) and (8) do not apply while the individual is enrolled in such approved training under par. (a) 3. or 4.

(e) The department shall charge to the fund's balancing account the cost of benefits paid to an individual that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if the individual receives benefits based on the application of par. (b), (c)-2., or (d).

**Draft language re: proposal to exclude from "employment"
services performed as mystery shoppers**

Amend Wis. Stat. §108.02(15)(k) to add:

21. Services performed by an individual who, on a temporary, part-time basis, conducts store audits or performs mystery shopping when such services are conducted on premises not used or controlled by the person for whom such services are provided.

Department Comment on Proposal to Exclude Mystery Shopper Services from the Definition of "Employment"

The Mystery Shopping Providers Association has proposed that Wisconsin's unemployment insurance law (Wis. Stat. Ch. 108) be amended to exclude services performed by individuals as "mystery shoppers" from the definition of "employment". The exclusion would preclude the use of wages earned for such services to qualify the worker for unemployment insurance benefits. It is not clear whether the proponent of the change would intend that the services also be excluded from state unemployment insurance tax obligations.

Mystery shopper services

Mystery shoppers are individuals who are paid to evaluate a specific business either in person, by telephone, or by use of the internet. Services as a mystery shopper also include evaluating the placement of products at specific stores and anonymous inventory counting. Mystery shoppers are given a specific assignment, complete and return an evaluation form to the employing unit when the assignment is completed, and receive compensation for the evaluation in a previously agreed upon amount.

The services performed as mystery shoppers are likely to be regarded under current law as services performed as "employees" in most if not all instances.

Whether a mystery shopper has performed services as an "employee" for state unemployment insurance tax and benefit purposes generally will be determined based on application of the "7-of-10" test used to determine "employee" status under Wis. Stats. §108.02(12)(bm)1.-10. The employee status of mystery shoppers has been tested by employer petitions to the Labor and Industry Review Commission. In no case has the Commission held that a mystery shopper performed services as a nonemployee. In view of the circumstances typically displayed in these cases, the services performed as mystery shoppers are likely to be regarded under current law as services performed as an "employee" in most if not all instances.

Under current law, the services performed as mystery shoppers are within the definition of "employment" and not within any of the exclusions.

Wis. Stat. §108.02(15)(k) excludes specified types of services from the definition of "employment" for unemployment purposes. Currently, there is no exclusion for services performed on a part-time basis in general. Nor is there any category of service excluded from the definition of "employment" that would encompass the services performed by "mystery shoppers". The proposal would add a new exclusion to those listed in §108.02(15)(k).

The contention that mystery shoppers ought to be excluded is apparently based on the premise that they earn small amounts of wages and do not earn a livelihood based on such wages.

It appears that the Association's rationale or justification for excluding mystery shoppers is that, to the extent they are held to be employees for state unemployment insurance tax and benefit purposes, employing units that utilize the services of mystery shoppers

might choose to cease doing business in Wisconsin. It is suggested that denial of the proposed exclusion will cause mystery shoppers to lose the ability to supplement their incomes at a time when the ability to earn even small amounts of income is critical. The Association estimates that 28,000 individuals are employed in Wisconsin as mystery shoppers.

A second rationale offered by the Association for excluding such services is that, typically, mystery shoppers perform their services on a sporadic, part-time basis, earning wages in amounts that are insufficient to sustain a livelihood.

Comment of the Department on the proposal to create a statutory exclusion for mystery shopper services

For the following reasons, the department does not support the exclusion of services performed by mystery shoppers:

1. Some mystery shoppers would be denied unemployment benefits entirely if the proposed exclusion is enacted (because their base period wages earned *as mystery shoppers* were necessary to qualify). Other mystery shoppers would have their weekly benefit rate reduced because mystery shopper wages are excluded from base period wages.

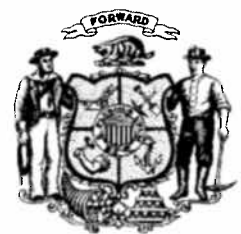
On the other hand, the burden on mystery shopper employers to pay benefits may be regarded as small. The Association states that the overwhelming majority of mystery shoppers earn a few hundred dollars annually. For that reason, the mystery shopper employer's unemployment account is often not exposed to charges for benefit claims for the mystery shopper's employment. For example, if the individual's base period wages earned do not exceed the minimum qualifying amount (about \$1,860), no benefits will be payable. *Even where benefits are payable*, if the wages earned on the mystery shopper employer's account in the base period are less than 5% of that individual's total wages earned in the base period, the mystery shopper employer's account will not be charged for the benefits.

2. One employer of mystery shoppers has expressed the view to the department that it ought to be free of the obligation to file reports to the department concerning the circumstances of the mystery shopper's separation from employment. These concerns may be at the heart of the Association's proposal. However, excluding services as mystery shoppers from "employment" will not relieve the employer from responsibility to respond to department inquiries when an individual claims benefits:
 - A. When a mystery shopper employer happens to be an employer in a claimant's base period, the department's investigation of the claim must include an inquiry to the employer of the mystery shopper to determine the facts: specifically, that the services performed by the individual were in fact statutorily excluded (i.e., that the services were in fact mystery shopper services and, because they are excluded, the earnings are not counted as base period wages) and not services of a type that are covered employment.

- B. A mystery shopper's claim for unemployment benefits may depend on wages earned and services performed other than in mystery shopping. Nevertheless, the claimant's earnings for services as a mystery shopper *in weeks for which that individual has filed unemployment claims* will need to be verified by inquiry to the mystery shopper employer, even if the mystery shopper's services are not "employment" for purposes of benefit eligibility. That income will reduce the amount of benefits for which the worker will otherwise be qualified.
- C. The mystery shopper employer will be required to respond to the department's investigation of separation or other eligibility issues related to the services performed by the mystery shopper for the mystery shopper employer. That is because the separation (for misconduct, for example) may disqualify the individual for benefits related to other employment even if the mystery shopper's services are not "employment".
3. The Association and employers of mystery shoppers may believe that the proposed exclusion will relieve them of duty to pay unemployment taxes. The exclusion, even if it excludes mystery shoppers for purposes of state unemployment taxation (as well as for benefit purposes), will not relieve the mystery shopper's employer from responsibility to report wages and pay federal unemployment taxes on such services. The federal tax is 6.2%, which is higher than state unemployment tax rates usually associated with service industries.
 4. Excluding mystery shoppers would have a detrimental effect on the unemployment insurance reserve fund. According to the Association, one large employer of mystery shoppers has reported that over 90% of its mystery shopper employees nationwide earn \$300 or less per year. Assuming that, on average, mystery shoppers in Wisconsin earn \$300 per year, 28,000 mystery shoppers (the Association's estimate) would generate \$8.4 million in annual taxable wages.
 5. US census data compiled by the department's Office of Economic Advisors shows that approximately 22% of Wisconsin's 2.8 million workers work part-time jobs (defined as an average of less than 35 hours per week). In hundreds of occupations in Wisconsin, including many in food service and other retail jobs, entertainment, health care and transportation, census data shows that a substantial majority of workers report that they work less than 35 hours per week. Like the mystery shoppers, many of the workers in such jobs produce a relatively small amount of annual income. Many work several part time jobs to earn a livelihood. It is difficult to distinguish the mystery shopper's case from that of the numerous other occupations and industries in which workers work part-time hours.
 6. Since its inception, the unemployment law has favored broad coverage, as noted by the Wisconsin Supreme Court in *Princess House v. DILHR*, 111 Wis.2d 46, 62, 64, 330 N.W.2d 169 (1983). While the statute will accommodate exceptions to coverage, in the department's view, exclusions should be created only for compelling reasons. If there are policy-based considerations favoring the exclusion of mystery shoppers or any compelling reason for doing so, the department does not believe the case has been adequately made.



WISCONSIN STATE LEGISLATURE



NOTICE OF MEETING

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Council Members: Please bring your calendars to schedule future meetings.

Council Web Site: <http://dwd.wisconsin.gov/uibola/uiac/>

MEETING

Date: Monday, October 5, 2009
Time: 9:30 a.m.
Place: Offices of the State of Wisconsin Investment Board
Room 226 (Board Room)
121 East Wilson Street
Madison, Wisconsin

AGENDA

1. Opening remarks – Hal Bergan

ACTION ITEMS

2. Minutes of Meeting September 22, 2009 (blue)
3. Next steps to address Reserve Fund solvency
4. Proposal to modify reduction of benefits for receipt of pension payments
5. Advisory Council Committee Recommendations Regarding Definition of "Employee"
 - a. Improve seven-of-ten test for "employee"
 - b. Repeal DWD 105 (Truckers)
 - c. Repeal DWD 107 (Loggers)
6. Advisory Council Committee Recommendations Regarding Definition of "Employment"
 - a. Exclude from "employment" personal care services for family
 - b. Review mystery shoppers
 - c. Review writers and news reporters

7. Department proposals for changes to the unemployment insurance law, Wis. Stat. Chapter 108, presented at previous meetings
8. UI Bill draft: LRB 09-3069/6
9. Department proposal to revise DWD 128, Able to Work and Available for Work
10. Department proposal to revise DWD 129, Benefit Claiming Procedures

INFORMATION

11. Letters to the Council (white)
 - ❖ The Council may not address all agenda items or follow the agenda order.
 - ❖ The Council may take up action items at a time other than that listed.
 - ❖ The Council may discuss other items, including those on any attached lists.
 - ❖ ***The labor members and/or the management members of the Council may go into closed session at any time during the meeting to deliberate any matter for potential action and/or items posted in this agenda, pursuant to sec. 19.85(1)(ee), Stats.***

Some or all of the Council members may attend the meeting by telephone. This location is handicap accessible. If you have other special needs (such as an interpreter or written materials in large print), please contact Robin Gallagher, Phone: (608) 267-1405, Unemployment Insurance Division, Bureau of Legal Affairs, P.O. Box 8942, Madison, WI 53708. Hearing and speech impaired callers may reach us at the above phone number through WI TRS (or TDD/Voice Relay 1-800-947-3529.)

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL MEETING

Tuesday, September 22, 2009 – 9:30 A.M.

Wisconsin Department of Administration

St. Croix Room

101 East Wilson Street

Madison, Wisconsin

Individuals Present:

Management: James Buchen, Dan Petersen, Susan Haine, Ed Lump, and Earl Gustafson

Labor: Phil Neuenfeldt, Dennis Penkalski, Anthony Rainey, and Sally Feistel

Chair: Dan LaRocque

Department staff: Hal Bergan, Andy Reid, Tracey Schwalbe, Tom McHugh, Troy Sterr, Pam James, Amy Banicki, Carla Breber, Jason Schunk, Dick Tillema, Mary Pronschinske, John Zwickey, Jess Erickson.

Others present: Jason Vick (Representative Mark Honadel), John Metcalf (WI Manufacturers and Commerce), Xiaochun Ye (WMC), Michael Metz (WI Independent Businesses), Tom Fonfara (DeWitt Ross), Tom Howells (Wisconsin Motor Carriers Assoc.), Tony Langenohl (Capital Consultants Inc. for Great Lakes Timber Producers Association).

MINUTES

Mr. LaRocque calls the meeting to order at 9:35 a.m.

1. Opening Remarks – Hal Bergan

Mr. Bergan discusses current federal legislation. HR 3548 to augment EUC benefits for up to 13 weeks will be voted on by the House today. HR 3548 will increase total benefits for some recipients to 92 weeks. The extension will not apply to all states, but to states with a seasonally adjusted total unemployment rate of 8.5%. This includes Wisconsin and about 27 other states. The bill does not remove the EUC sunset at the end of this year; nor does it extend any provisions of the federal Recovery Act. The Recovery Act covers interest charged on money borrowed by states for 2009 and 2010. Also, the Recovery Act provided for Federal Additional Compensation (FAC) of \$25 for all claimants through 2009. FAC and other federal extensions and the federal government's 100% payment of extended benefits will sunset at the end of this year. Mr. Bergan has talked with DOL. To extend all of these provisions through 2010 would cost about \$70 billion. Congress might extend these provisions for 6 months, rather than a full year, to limit the cost of the extensions. The federal unemployment trust funds are tapped out and the funding source now is general treasury.

In operations we are keeping up with initial claims. People are getting into the system. For regular UI, last week compared with the same week last year our initial claims were up 74%. At this time last year we started to see the spike in claims. It continues to be an extraordinary level of claims. The 74% is still a high number, as it is compared to a high base of claims last year.

The inquiry line continues to be a challenge. This is a primary focus of our attention. Many calls are from people with pending issues in adjudication. The strategy is two-fold. We want to address the source of the calls so the calls are minimized and improve our capability to respond to the calls. Although the drop rate is higher than we would like, we have many repeat callers. People call 4 or 5 times before getting through. There will be a news story today after the House acts on the benefit extension bill (HR 3548), so our inquiry line will light up tomorrow.

We are in the process of interviewing 39 new adjudicators and 35 new claims specialists to deal with winter workload. They are project positions, but adjudicators will likely longer. We are sending out about 192,000 checks per week and running 5 programs. Basic UI is tracking down a little. EUC benefits are tracking up a little and EB is holding steady. There is no end in sight to the increased workload.

Question (Buchen): Is the decline in numbers for regular UI because people are exhausting benefits or is it because of lower initial claims?

Mr. Bergan responds that the initial claims are down a little, but this is the low season for claims.

Question (Penkalski): Has the average amount of the benefit check gone up or down?

Mr. Bergan responds that with the FAC of \$25 check amounts are up, but otherwise the average check is not up or down much. The 2009 benefit increase (\$8/week) was modest. Nationally, duration of unemployment is lengthening.

Twenty-two states are borrowing from the federal government. The total borrowed nationwide is about \$15 billion. That will increase as we enter the season when claims go up and revenues will be low. DOL projects borrowing will be about \$90 billion by the time the recession is over. This does not account for changes states might make in their revenue systems. DOL does not have a strategy yet but they know the circumstances are tough and will get worse through 2013.

2. UI Treasurer's Financial Statements

Tom McHugh, Treasurer of the UI Reserve Trust Fund, handed out the financial statements with line items identified. Page 1 is the balance sheet. Letter A shows the trust fund federal loan balance is \$569 million. We did not have to borrow for a while because we had second quarter receipts and received the UI modernization money. Letter B shows the reserve fund balance with \$154 million being the balance of all employer accounts. Page 2 shows receipts and disbursements. Letter A shows receipts year-to-date of \$541 million. It is less than last year of \$542 million; despite the change in the taxable wage base, we took in less money. Gross wages are down about 8% compared to last year. Taxable payroll is up 2.28%.

Question (Buchen): If taxable payroll is up, but collections are down, does this mean people are going down in the rate schedule?

Mr. Tillema indicates that this may be a shift in which employers are paying. Total payroll has dropped by about \$2 billion and 85% of that is in manufacturing, construction and that segment of support that provides (temporary help to manufacturing). Those were generally higher taxable payrolls. Those were employers that would pay at higher rates and typically are employers that would have payroll at or above wage base. We may get more collections from lower wage employers in the third quarter.

Comment (Buchen): It sounds like there are disproportionately larger reductions in workforce in people at higher end of the tax schedule.

Question (Petersen): Is this also affected by the tax deferral?

Mr. McHugh indicates that for the first quarter there were only 500 accounts that deferred about \$9.6 million. Deferrals as of August 31 were \$3.4 million for 304 accounts. We liberalized who can take deferrals so we expected this number to be bigger. Federal program receipts on page 2 are \$768 million, compared to \$47 million in the prior year. The footnote B shows that we did get the modernization funds of \$134 million in June and August. Overpayment collections are up because benefits payments are up. Letter D shows the federal loans taken to date which are \$805 million, but we paid back \$236 million of that with first quarter contributions. Letter E shows that charges to taxable employers this year have been \$1.2 billion, compared to \$567 million the prior year. Charges to the balancing account for quits is shown on Letter F of \$128 million. This is up quite a bit. Letter G shows the various federal extended benefit programs of EUC of \$201 million, the \$25 FAC of \$26 million, and the Extended Benefits of \$381 million. The Extended Benefit amount is the one that employers would have to pay 50% of if not for the full federal funding through 2009. Mr. Bergan indicates that the figures identified by Letter A show the shift from the regular tax rate to the solvency tax made in the last bill.

Comment (Buchen): In the long-term that shift will produce higher taxes because employers are not getting as much in their accounts.

Question (Rainey): Why are TRA payments down compared to last year?

Jason Schunk, Bureau of Benefits, indicates that this is because TRA is being paid after all other benefit extensions are paid.

Question (Buchen): Which type of payments ordinarily would be paid 50% by the states?

Hal indicates it is extended benefits.

Question (Haine): If Congress passes the benefit extension in the bill, would it be a sixth benefit program that the department would have to run?

Mr. Bergan responds affirmatively. Because it is an extension, it is a little easier to do. But generally, shifting from one program to another is difficult administratively.

Mr. McHugh indicates that page 3 shows the UI modernization funds we received in June and August. Letter B shows the negative balance in the balancing account. In October we will run the new rates and do the 10% write off. Usually the write off is about \$198 million; this year we anticipate that the write off will be \$404 million. When the October tax rates come out, there will be another \$400 million on the negative balance figure, so that will be a negative \$1 billion in the balancing account. Last year there were 37,832 employers with a rate increase. This year the number of employers with an increase will be more than double last year's number.

3. Unemployment Reserve Fund

Mr. Bergan refers to handouts containing a forecast for the reserve fund. Our closing balance at for 2009 is projected to be a negative \$984 million, and in 2010 a negative \$2.2 billion. The negative balance continues to grow in 2011 to \$2.7 billion. It is projected to go down in 2012. In 2013, the fund is projected to have a negative \$2.3 billion. In 2013, the projected taxes and revenues will be going up and our benefit payments will be going down. These projections are based on the most recent DOR forecast in June. The further out the projection, the less dependable are the numbers. Overall, the projection is helpful to understand the problem. When 2013 comes, some of the reduction comes from reducing the FUTA tax credit. That will cause taxes paid by employers to repay the loan. Page 2 shows how data has changed with the different forecasts. We are at our worst in 2011, but it is not a dramatic recovery from there.

Question (Buchen): The projections show that the worst situation is 2011. This must be based on the expectation that unemployment will rise though 2010, correct?

Mr. Bergan indicates that it is less than that we will start 2010 at a higher level than 2009. We hope that unemployment will start to level out. The consensus of the forecasters seems to be that unemployment will improve slowly. The difference between 2009 and 2010 is really a reflection of where we start in deficit in 2010. The difference in the unemployment rate from 6% to 9% is really a 50% increase for us in what we pay out in benefits. We can hope things get better, but we need to plan with these figures in mind.

Question (Neuenfeldt): Are you tracking the numbers of people that "leave" unemployment (and thus are not counted among the unemployed) because of obtaining employment rather than just running out of benefits?

Mr. Bergan indicates that we do not know why people stop claiming benefits. Some are no longer eligible. Various circumstances and issues may cause them to become ineligible or to stop claiming. Claimants exhaust their benefits at different points. About 10% of people exhaust at 26 weeks because they are not eligible for the benefit extensions. The department has provided charts in the past to the Council showing how many are participating in each program. Relatively few people go through the full 79 weeks.

Question (Buchen): If a claimant has dropped out because of an eligibility issue, would the department have a record of how many of those people there are?

Mr. Bergan indicates that by far the largest factor from what we can tell is that they are returning to employment. It might not be the same as they had before. They may be returning at a lower rate or to part-time work.

Comment (Neuenfeldt): So these figures show that this is all a result of the jobless economic recovery. There may be a stock market recovery. On the bottom end, however, people are working at the types of jobs left behind. This is a consequence of years of outsourcing. When things are purchased offshore, that's where jobs are created, not here.

Comment (Buchen): If you look at the output of American manufacturing, it has never declined substantially. We just make more stuff with fewer people all the time. The Federal Reserve analyzed the last few recessions. Each recession seems to produce a slower rebound in employment. The conclusion was that employers tend to downsize and are reluctant to hire back. They use more automation, etc. Each recession seems to have a slower return to previous levels of employment. It is not good news, but it is due in part to efforts to increase productivity.

Comment (Neuenfeldt): You cannot ignore the hundreds of thousands of jobs that have left the country.

Comment (Buchen): Because there are jobs in another country does not necessarily mean that jobs are reduced in America. It is not that no jobs are lost, but we are still the largest exporting country in the world.

Comment (Neuenfeldt): He has reviewed dislocated worker records and the firms certified because the jobs are moved overseas. We have the largest trade deficit in the world.

Comment (Gustafson): Mr. Gustafson would be interested in reading studies about what percentage of jobs have been outsourced, how many workers were retrained, and the net impact of that. He has heard anecdotes. Economists are suggesting a possible "double-dip" recession.

Comment (Neuenfeldt): DWD can give a list of all of the jobs that have been Trade Act certified that have moved. General economic indicators show earning power of working families. If you review those in the broader economy, you can draw your own conclusions.

(Question) Lump: The projections assume there are no changes in law. As a council, we can affect the outcome based on benefits and taxes, correct?

Mr. Bergan indicates that this is correct. He refers to his handout showing Employer Accounts – Revenue and Expenditures and Solvency Taxes and Charges. Since 2001, there has been a pattern that in most years we ran a deficit when subtracting net charges from the taxes received. In a recession it is a substantial deficit. The number through 7-31-09 will change because we know what the write-off will be (\$404 million). Over the long term, both elements of our system, i.e., the basic and solvency taxes have been out of balance over the last 7 or 8 years. It is

important for us to come up with some phased steps over the next couple of years that would put both of these systems in balance. We would be able to cover charges to the balancing account and basic taxes to cover benefits paid by those employers. It is a two-pronged task. DOL experts on revenue have a good perspective of state systems and the factors in maintaining solvency. Solvency is a greater challenge in some states. We should consider those things. We need to get the charging in balance and develop a strategy to pay off a deficit.

Question (Neuenfeldt): Are the states that are borrowing going to look to the federal government for some relief? Are there discussions going on and who is talking to the feds?

Mr. Bergan indicates that there are other states similarly situated. They are at an early stage. Debts are similarly large compared to their economies. Federal relief is possible down the road, which likely would depend on the solvency of the individual state's system.

4. Minutes of Meeting September 1, 2009

Motion (Lump), seconded (Penkalski), to approve minutes of September 1, 2009, passes 9-0.

5. Advisory Council Committee Recommendations Regarding Definition of "Employee"

- a. Improve seven-of-ten test for "employee"**
- b. Repeal DWD 105 (Truckers)**
- c. Repeal DWD 107 (Loggers)**

and

6. Advisory Council Committee Recommendations Regarding Definition of "Employment"

- a. Exclude from "employment" personal care services for family**
- b. Review mystery shoppers**
- c. Review writers and news reporters**

Mr. LaRocque indicates that the "employee" and "employment" definitions are on the agenda for discussion and action by the Council.

Agenda item number 5.a. (Improve seven-of-ten test for "employee") is fundamental to the UI program. The UI Advisory Council's Committee made the proposal to improve the definition. For items 5.b. (Repeal DWD 105, the rules to determine whether a trucker is an employee) and item 5.c. (Repeal DWD 107, the rules to determine whether a logger is an employee), industry representatives wish to have more input on the Committee's recommendations. We can accommodate that input.

Agenda item 6.a. (Exclude from "employment" personal care services for family members) is a recommendation by the Committee.

Item 6.b. (Review mystery shoppers) is a topic for Council consideration. Prior to the September 1 meeting, the department provided a two-page summary of the department's view of the

proposal by the mystery shopper industry. A mystery shopper is someone hired to go into a retail business and report back as to service and quality without the staff in the store knowing.

Regarding item 6.c. (Review writers and news reporters), Mr. LaRocque spoke with Jeff Mayers of Wispolitics.com regarding writers and news reporters. The meeting packet delivered to the Council for today's meeting includes an exchange of email with Mr. Mayers regarding the conversation.

Question (Lump): Since the Committee met and made recommendations regarding the regulations applying to truckers and loggers, there has been some testimony received by the Council and some conversations. What is the status of this in the department's eyes? This may be more complicated than the Committee originally thought.

Mr. LaRocque indicates that it is the department's perspective that rules DWD 105 and DWD 107 are flawed and should be changed. The trucking and logging industry associations have made the point that we ought to have more input from them before repealing the rules. He is willing to schedule meetings to get their input.

Comment (Gustafson): He has been in contact with the loggers' association. They would like to see action on DWD 107 tabled and have the opportunity to work on it. They understand the department's perspective, but there are also unique aspects of the work in that sector. If we move forward on other aspects now, it would be helpful not to move forward on DWD 107.

Mr. LaRocque indicates that it is up to the Council to decide how to proceed. Improving the seven-of-ten test is more fundamental and important than the other items and could be separated.

Comment (Lump): As long as the door is open to discuss this with other industries, the department should meet with industries before we meet again in couple of weeks and see if any progress has been made. He is hesitant to approve these items with the possibility of negotiations going on. For items 5.b. and 5.c., the Committee tried to reach out to people, but could have been more aggressive in doing that.

Question (Neuenfeldt): What is the legislative strategy for the bill, one bill or two bills? What is the timeline?

Mr. LaRocque indicates that there is a bill draft done by the LRB. That has been distributed to the Council. The legislative floor period ends November 5. The department asked the LRB to draft all of the provisions presented to the Council, including those not yet approved. The department is prepared to go ahead with the bill.

Comment (Neuenfeldt): Questions whether the Council should put a bill forward that has some changes but does not deal with solvency and other issues. Would the Council be better off waiting for total package?

Comment (Buchen): If you look at the magnitude of the problem, the solutions become daunting and are going to be controversial. On the employer side, there will be tax increases which will

be hard in this economy. The situation has to be addressed, but the process and outcome is fuzzy now. We have recently been made aware of the magnitude of the problem. We could take care of uncontroversial issues, and that bill can go through the Legislature. We can be prepared to respond to questions, but we cannot get the other things resolved by the end of the floor period.

Comment (Lump): Suggests that we hold the whole seven-of-ten test for a few weeks. It is not crying out to be fixed. We can see some language from the department regarding mystery shoppers and writers that we could consider.

Mr. LaRocque indicates the department will provide some write up on mystery shoppers. Freelance writers may be more difficult. Mr. Mayers indicated it would be hard to justify on a policy basis excluding writers working for the news media alone.

Question (Penkalski): Does the department have suggestions about what period of time will be needed to pay this off?

Mr. Bergan indicates that he has not done that yet because he needed to hear from the Council what it wants to do. Generally, we should phase something in over 2 or 3 years. The reason to do it sooner is to drive the number down and the overall debt will be lower. There is urgency about it. Then we should deal with the solvency part and see what new numbers would generate on the projections, and then develop a separate strategy for whatever debt is left.

Question (Gustafson): The Council has been speaking about this since last spring when we were trying to make sure we had full access to federal benefits. It should not come as a surprise.

Mr. Bergan notes that people know there are issues to be addressed. The department wanted some guidance from the Council. There is work to do.

Comment (Buchen): If we approve a bill with these changes, we would be in a position to talk with legislators about the other issues and explain that we are working on it.

Comment (Penkalski): It may be more appropriate to at least take a small step forward now.

Comment (Gustafson): They should understand that the Department and the Council have not been dragging our feet. We were waiting for some good numbers.

Comment (Buchen): We need to determine the amount that allows you to declare the system solvent in the long term. Then we need to determine how to share the pain here. There are places in the system where we spend money that is not absolutely essential to the fundamental purpose of keeping people in their homes and feeding families when they are unemployed. It cannot all be on the tax side; it is not going to happen. Whatever the number is, it will primarily come out of higher taxes, but there are other issues on benefits side that need to be examined.

Comment (Neuenfeldt): He is happy to work on two bills, but it would be good to have some feedback about how the Legislature might perceive the issues and introducing two bills. It is a matter of legitimacy of the Council process.

Comment (Haine): We have a bill with some typical UI fixes. The Council is aware of bigger issues and will deal with those in a second bill.

Comment (Lump): He was here in the 1980s. The Council did not come up with a solution and the Legislature had to take charge and made changes that were not popular with anyone.

Comment (Buchen): At that time, the Council's procedures required unanimity and they could not get it. There were massive tax hikes and benefit cuts. It worked, and got the system back to solvency, but it was modified shortly thereafter because it generated more money than we needed at the time.

Comment (Haine): The Council wants to be out in front. The Council is aware of the trust fund issue, but may not have a solution yet in the bill this year. We could do the other things in a bill.

Comment (Buchen): We need to find out from the legislators if they will be ok with two bills. We do not know yet because we have not asked them yet. It may be premature to set a strategy.

Mr. LaRocque indicates that if the Council wants to do a bill this fall, the bill would need to be done on October 5. The Council has the draft bill. He can take input between meetings to make progress on the bill before then. In the draft, the highlighted language shows the provisions that are not yet approved by the Council.

Comment (Neuenfeldt): They will be letting the legislative leadership know the projected deficits. It would also be helpful to let them know that this is not just Wisconsin, but how many other states are in this position. Also, they should know that it is possible that there may be some relief from feds that would come later rather than sooner; and that we need to deal with solvency. We can tell them there are some issues that can move quickly, and ask if we should do two bills. The leadership may want a total package; we will need to see what they say.

Comment (Gustafson): A further point is that the Council has been on top of this but there was uncertainty of the depth and duration of the recession until we got some strong numbers. Also, there is the possibility of the double dip which adds another twist.

Comment (Buchen): The Council has not been blind to this. The last bill was an attempt to address this with increasing the taxable wage base and adjusting solvency taxes. The situation was not as dire when we were looking at the situation as it is now.

Comment (Neuenfeldt): People will understand that the Council has been on top of this, but suggests that they may wonder about how long it will take to come up with solutions.

Mr. Bergan indicates that for the solvency side, most of the potential steps to address this are not that complicated, we just need to decide to do it. In the 1980s we created a tax table that was a little unusual. We should amend that tax table to be more consistent and understandable.

Comment (Neuenfeldt): We should see what the feds are recommending, so we are prepared to take advantage of any federal relief.

Comment (Gustafson): The feds seem to think that states cannot have a large enough rainy day fund; we have seen this from them in the past. When we had \$1.6 billion in the account, they still said it was not high enough. It turns out they were right, but not for the right reasons.

Mr. Bergan indicates that he suggested that DOL change their standard as to what is important. The feds have always focused on the balance in the reserve account. He thinks it is wiser to deal with internal solvency of the account than the balance, which is a different thing. They were responsive to that. The kinds of balances they have urged over the years are very high. There are other ways to judge the solvency of your system than the balance in the account.

Comment (Buchen): We may need a program that is more reflective of the unemployment rate and triggers. We need to look at the demands on the system and the lags. There is another way to do this.

Comment (Neuenfeldt): The Council may need to caucus to digest what they have heard. In terms of one or two bills, between now and next week Mr. Bergan should communicate with the legislative leadership so we can make a decision on October 5 whether we have two bills or one. Labor and management can communicate as well. Eventually we need to communicate with the whole Legislature as well.

9. Department proposal D09-22 – Amend Approved Training and Extended Training

Comment (Neuenfeldt): He does not like the limit of “high demand occupation” for approved training. Not everyone is in a position to train for those occupations. There also can be long waiting lists. That term raises concerns because there may be few high demand occupations.

Tracey Schwalbe provides an overview of the department proposal. When workers are in regular approved training (AT), they do not have to meet some of the requirements for benefits that regular claimants have to meet. They do not have to do a work search, they do not have to be able and available for work, and they can refuse suitable work while in the training. Claimants in TRA or dislocated worker programs also can leave unsuitable work to enter training. Claimants are eligible for up to 26 weeks of benefits while in approved training. With Act 11, we added additional benefits while in Extended Training (ET) of up to an additional 26 weeks. Now someone can be eligible for up to 52 weeks of benefits while in AT/ET. The two programs are somewhat different as currently drafted. As the department has been working on the implementation plan and programming for ET, the department came up with ways we could harmonize the laws and make it easier on people to understand the programs and make it a seamless process for claimants in training. We do not want claimants to be frustrated after 26 weeks that they cannot continue to receive benefits because of the changed requirements for ET; and we do not want to have to investigate the claimant’s training again after 26 weeks to see if it meets the ET requirements and slow down or stop benefits while we have to do that investigation. We separated the proposal into different the issues. The harmonizing and synchronizing of AT/ET is one part of the proposal. There are also changes that must be made to

the current law that are required for federal conformity purposes. We separated that out so you can see what absolutely has to be changed from what the department is recommending be changed. There are also some changes to ET that DOL requested we make to clarify those provisions. On the summary page, the harmonizing provisions are identified with the first set of bullet points. The fiscal analysis for each change is broken down and provided in each bullet point. Overall, the harmonizing changes have a balanced effect on the trust fund. One proposed change subtracts about \$1 million in benefits and several other proposed changes together add about \$900,000 in benefits. The total fiscal effect of all of the changes is about \$100,000. Dick Tillema prepared the fiscal analyses and is here to answer any questions on that.

Carla Breber, Bureau of Benefits, presents the AT/ET harmonizing part of the department proposal. First, the department is proposing to eliminate the cutoff date of October 1, 2003 [in Wis. Stat. §108.04(16)(c)], for approved training that is administered by the department. We do not want the artificial date to prevent us from approving some new and innovative programs that are administered by the department. Second, the department proposes to approve all WIA-funded training for AT. All WIA-funded training is approved training for the ET benefits and we want these automatically approved for AT as well. This would allow a seamless transition from AT to ET for many claimants. Third, there is already a requirement for regular AT that requires the department to evaluate the training program and determine whether it will increase the person's opportunities to obtain employment. We would like to replace this language with the phrase currently used for ET benefits that the training is for a "high demand" occupation. They are similar concepts. The proposal would make the terms used consistent. The department can define "high demand." The approved training investigation that the department does today does look at the training. The type of training has to be approved. All Trade Act training and WIA-funded dislocated worker programs are automatically approved training regardless of whether the occupation is "high demand." Also, all department-administered programs as of the October 1, 2003, date are automatically approved regardless of whether the occupation is "high demand." If someone is getting training that is not in one of these programs, the department looks at the program to see if it meets certain requirements, such as if the training is a vocational school, is full-time, etc. We do a complete investigation.

Finally, the department proposes to remove the requirement from ET that the separation must have been from a declining occupation or involuntarily separated from employment as a result of a permanent reduction in operations. This would make ET more similar to AT. These three changes would make a seamless transition from AT to ET so we do not have to re-investigate and delay benefits and possibly deny ET when the person is in the same program and it was approved under AT. The proposal also would allow the department to apply the approved training protections without having to conduct a full able and available investigation. A few changes in the statute would allow the department to make a faster investigation of the issues for someone in approved training. Right now we do a complete able and available investigation before we even look at approved training. We want to streamline this so that if the person is in approved training, we do not need to look at whether they are able and available for work. There is really no need to conduct that investigation; if they are in approved training they do not need to be able and available for work. This will save time and speed the payment of benefits.

Comment (Neuenfeldt): There are approved training providers, and people need to meet the criteria for training. A lot of people come into the system through the dislocated worker program. They go through a case management process where they look at they type of training. It is not a unique UI decision.

Ms. Breber indicates that those things will not change. Someone in a dislocated worker program will still automatically be considered to be in approved training. The department is proposing to broaden this to be more than just the dislocated worker programs, but all WIA-funded programs. Anyone in trade training or a program administered by the department is approved.

Question (Neuenfeldt): Who would you be denying then? Who are the people that make up the \$1 million in benefits that are being lost?

Ms. Breber indicates that there are still a fair number of people in training that is not through one of these programs. They are approved now if the training meets the requirements in the statute. They all may not fall out of the program. Dick Tillema indicates that the people who represent the \$1 million in decreased benefits are those people in the regular approved training, who are not in TRA or WIA dislocated worker or a department-administered program. People in those programs are automatically approved and would not have to meet the "high demand" criterion. The people who would need to show that the training is for a "high demand" occupation for regular AT would be people who are not in those programs. They may be in any kind of training, such as a fork lift operator, which did not come to the person because of participation in TRA or dislocated worker or a department-administered program. The person just decided they would get training as a fork lift operator while they were unemployed. The latter situation is different from one in which large numbers of people are dislocated or unemployed when a plant closes and the Department goes out to find ways to put them back to work.

Question (Neuenfeldt): If someone is in TRA and wants to be trained as a fork lift operator, that would be ok, but someone who is not in TRA or the other automatically approved programs would not be approved for fork lift operator training?

Ms. Breber responds that this is correct, and this is true today for all approved training. If a case worker decides that some college is appropriate for the person in TRA or dislocated worker, we would automatically approve that but we would not approve the college training for someone just seeking training in college on their own. Automatic approval is dependent on the case worker deciding that this is the right training for this person. This is a line that is already drawn in the statutes. That difference in treatment was created long ago.

Mr. LaRocque indicates that the "high demand" concept came into the law this year (Act 11). We put that in the extended training program provisions. It is there now. People will enter the approved training now without having to meet the "high demand" standard and will find out after 26 weeks that they are not entitled to extended benefits. This will focus them on a high demand occupation so they are more likely to be reemployed and provide the term of benefits needed.

Question (Haine): She understands the need to harmonize the programs so claimants are not confused and the department does not have to reinvestigate. The "high demand" piece is a minimum requirement of the ET but the state can define "high demand." What is the definition?

Mr. LaRocque indicates that the department has had to define this for ET purposes. It encompasses a large percentage of jobs in Wisconsin. Jason Schunk, Bureau of Benefits, indicates that the department has a list from the Department's Office of Economic Advisors with the projections of what occupations Wisconsin will increase in numbers over a ten-year period. The "high demand" jobs are those that have a 10-year projected rate of growth that is greater than average. We took out the jobs that require a bachelor's degree. There were still several hundred (well over 50% of all) job titles that qualify as "high demand."

Comment (Haine): The focus seems to be to direct people to training where they will be able to find a job. We do not want to train people for jobs that are declining. If it covers that many occupations, then that is still broad.

Mr. LaRocque indicates that there is a tradeoff in the proposal. On the one hand, some people will not get benefits valued at \$1 million (if they are not training for a "high demand" job and not in any of the other categories of approved training). On the other hand there are other people who will get benefits that they are not getting now (valued at \$900,000) and there are people who will enter the AT program and not be held up at the stage where they enter the ET benefits.

Mr. Bergan states that are some reductions, but there are also benefits to more claimants. It is close to a wash in terms of fiscal effect on benefits. The idea of harmonizing and making the program more consistent and more manageable is a very important thing. We are going through the experience now where benefits are being held up because we have an endless list of issues we have to adjudicate. This is exactly where this comes from. Someone was eligible for benefits initially and is not now, then we have to deny and we are investigating. People are left in limbo. Any steps we can take to make this program more understandable and less arbitrary to the people we are trying to serve is very important. From an administrative standpoint, as we are running several programs and trying to get people benefits, there is even more urgency.

Comment (Buchen): The fact that there is fiscal balance in the proposal is absolutely critical.

Question (Petersen): Is it possible that some people in AT would be approved in ET?

Ms. Schwalbe indicates that this is correct if the person also met the separate requirements for ET. This would require the department to investigate after the claimant exhausts AT to see whether the claimant originally left a declining occupation and was training in a high demand job. The person may not meet these requirements and then after receiving 26 weeks of training and benefits would be denied further benefits.

Question (Petersen): Is it possible to change the ET portion to be any AT program without the "high demand" requirement?

Ms. Schwalbe indicates that the state can broaden this to provide ET benefits to anyone under the current language in AT. That would be broader than what the department proposed. We thought the policy of focusing on a high demand job for AT was appropriate.

Comment (Haine): She is concerned about the administrative difficulties and that claimants would be completely confused about why their benefits are being cutoff. She also appreciates the fiscal balance in the proposal. She read the analysis and it was good and would make things more understandable. If "high demand" is defined broadly enough, it should work well.

Mr. LaRocque indicates that the proposal provides balance, does not do any radical changes, but streamlines the programs. There is statutory language on D09-22 in the analysis document the Council received today.

8. Department proposal D09-21 – Authorize Spending of Special Administrative Transfers

Mr. LaRocque indicates that this allows the department to spend the \$9.6 million the department received for UI administration under the RECOVERY ACT.

Motion to approve D09-21 (Buchen), seconded (Neuenfeldt), passed ~~unanimously~~ 9-0.

10. UI Bill: LRB Draft 3069/5

Mr. LaRocque indicates that D09-22 (Harmonize Approved Training and Extended Training) is not in the bill draft.

Motion to meet in closed session

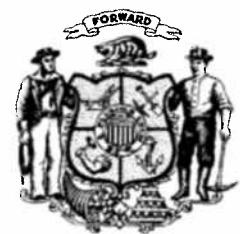
Motion (Buchen), seconded (Neuenfeldt), is passed ~~unanimously~~ 9-0 to go into closed session to consider the department proposals for changes to chapter 108 presented at various meetings to date including D09-22 presented today, and to consider the department's proposals to revise Wisconsin Administrative Code chapters DWD 128 and DWD 129, and to consider the draft bill language in LRB draft 3069/5, pursuant to section 19.85(1)(ee) of the Wisconsin Statutes; and to consider the meeting adjourned without return to open session today. Closed sessions by the management and labor members of the Council, respectively, began at 10:35 p.m.

The next meeting of the Council will be held at the offices of the State of Wisconsin Investment Board (SWIB), 121 East Wilson Street, Madison, WI. Parking is available across the street from SWIB.

The Meeting of the Council adjourned upon the end of closed sessions at 12:45 p.m.



WISCONSIN STATE LEGISLATURE



NOTICE OF MEETING

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Council Members: Please bring your calendars to schedule future meetings.

Council Web Site: <http://dwd.wisconsin.gov/uibola/uiac/>

MEETING

Date: Wednesday, October 21, 2009
Time: 9:30 a.m.
Place: Offices of Wisconsin Department of Corrections
3099 East Washington Avenue (Colorado Room)
Madison, Wisconsin

AGENDA

1. Opening remarks – Hal Bergan
2. Financial Statements

ACTION ITEMS

3. Minutes of Meeting October 5, 2009 (blue)
 4. Assembly Bill 487
 5. Unemployment Reserve Fund solvency
- ❖ The Council may not address all agenda items or follow the agenda order.
 - ❖ The Council may take up action items at a time other than that listed.
 - ❖ The Council may discuss other items, including those on any attached lists.
- ❖ ***The labor members and/or the management members of the Council may go into closed session at any time during the meeting to deliberate any matter for potential action and/or items posted in this agenda, pursuant to sec. 19.85(1)(ee), Stats.***

Some or all of the Council members may attend the meeting by telephone. This location is handicap accessible. If you have other special needs (such as an interpreter or written materials in large print), please contact Robin Gallagher, Phone: (608) 267-1405, Unemployment Insurance Division, Bureau of Legal Affairs, P.O. Box 8942, Madison, WI 53708. Hearing and speech impaired callers may

reach us at the above phone number through WI TRS (or TDD/Voice Relay
1-800-947-3529.)

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL MEETING

Monday, October 5, 2009 – 9:30 A.M.

Offices of the State of Wisconsin Investment Board

Room 226 (Board Room)

121 East Wilson Street

Madison, Wisconsin

Individuals Present:

Management: James Buchen, Dan Petersen, Susan Haine, Ed Lump, and Earl Gustafson

Labor: Phil Neuenfeldt, Dennis Penkalski, Anthony Rainey, and Patty Yunk

Chair: Dan LaRocque

Department staff: Hal Bergan, Andy Reid, Tracey Schwalbe, Tom McHugh, Troy Sterr, Pam James, Lutfi Shahrani, Amy Banicki, Carla Breber, Ben Peirce, Dick Tillema, Chris O'Brien, John Zwickey, Jessica Erickson, Amesia Ngialah, Robin Gallagher, Diane Kraft.

Others present: Mary Beth George (Representative Christine Sinicki), Jason Vick (Representative Mark Honadel), Bob Andersen (Legal Action of Wisconsin), John Metcalf (WMC), Michael Metz (WI Independent Businesses), Tom Fonfara (DeWitt Ross).

MINUTES

Mr. LaRocque calls the meeting to order at 9:37 a.m.

1. Opening Remarks – Hal Bergan

Mr. Bergan indicates that the federal 13-week benefit extension has passed the House. There is some concern about the bill in the Senate among states that are not eligible for the benefit extension. Wisconsin would be eligible for the extended benefits under the bill as drafted with the required 8.5% total unemployment rate.

Question (Neuenfeldt): Could you please explain the programs that are in effect now?

Mr. Bergan responds: regular state benefits of up to 26 weeks; 20 weeks of Emergency Unemployment Compensation (EUC08); 13 weeks of Tier 2 EUC08; 13 weeks of Extended Benefits (EB); and 7 weeks of High EB. The total is a potential for 79 weeks of benefits. We are seeing the first wave of exhaustions at 79 weeks. It has not been a large number, but it will continue to increase. The first group to exhaust all 79 weeks was about 3,500, and now we are seeing about 1,000 per week.

Question (Buchen): If the new federal program is passed, will those claimants be eligible for the additional 13 weeks?

Mr. Bergan responds affirmatively. The administrative challenge will be to get ready to pay those benefits as soon as possible. We need to hear from DOL about any new wrinkles in the laws or program. We have tried to get a head start on the programming that will be needed so we can move quickly when we hear from DOL.

Question (Gustafson): If someone has exhausted before the 13-week extension is passed, would the benefits be paid retroactively?

Ben Peirce, Central Operations Manager, indicates that the legislation as drafted would not be effective retroactively; it would apply to benefits for weeks after the extension bill is passed.

Question (Neuenfeldt): Why would some states not be eligible for the additional benefits?

Mr. Bergan responds that the bill as drafted requires a state to have a total unemployment rate of 8.5%. Currently, 27 states would qualify, including Wisconsin. Wisconsin has an 8.7% total unemployment rate.

It is not clear there will be an extension of the Recovery Act (ARRA) provisions. These are important to the department and claimants for several reasons. The Recovery Act provides for federal payment of the state employers' share of EB. It would be a hardship to have that discontinued. Recovery Act also provided claimants the additional \$25-per-week benefit. There is a lot at stake and the fiscal cost to the federal government is high. The presumption is that Congress will extend these provisions, perhaps for 6 months, with the option of extending it again.

Question (Buchen): When do the provisions expire?

Mr. Bergan responds that they end as of January 1, 2010, with a phase out period into 2010. If Congress does not do something, it would be a dramatic change from what we are doing now.

Mr. Bergan reports that the department continues to prepare for the winter workload increase. We are much better prepared than we were last year, particularly in claims. We have a continuing effort to add personnel. We have 75 currently in training or about to train and will be available for the winter workload. There are some additional administrative personnel. We have twice as many claims requiring behind-the-scenes administrative work. We are hopeful to add positions for that. The federal government has provided funding; we have the resources we need in the short run. We do not know how long we will need the additional staff.

We have made significant headway in nonautomated claims. These are claims that cannot be handled by the automatic system and require hands-on attention by a claims specialist. A lot of that work comes from the fact that we are operating several programs; the changes in a claim over time can create time-consuming work to adjust claims. A few months ago, the backlog for nonautomated claims was about 7,000 cases and it took weeks to get things through which delayed benefits for those waiting. Now that number is down to 1,500 and going down further.

We have also been focusing on the work that we do that can be done by people with less training so we can free up the more experienced resources to do what needs to be done in claims.

3. Next steps to address Reserve Fund solvency

Mr. Bergan states that the Legislature is willing to entertain two UI bills. A routine bill would be on what could be agreed upon today and that bill would be passed by November. A more general bill that would focus on the reserve fund would be done in January. Our hope is that that is how we will proceed.

Question (Neuenfeldt): Is the goal to have the bill completed in January?

Mr. Bergan responds affirmatively. The next Council meeting is October 21. The department is working on a list of options for the Council to consider and to see how the various options might work and what their fiscal effects would be. That work is underway. As we do that, it would be helpful if Council members let the department know if they have particular options that might not be on the list and we will do what we can to get ready and have some of that information completed by the 21st.

We are also looking at the federal requirements relating to borrowing. We will be prepared to spend some time on borrowing on the 21st.

On the revenue side, the DOL has a lot of comparative information on revenue systems across the 53 UI jurisdictions. Some of that work would be helpful for the Council. Mr. Bergan will put something together for the 21st as to what DOL views as best practices in other state systems. The triggers for the Wisconsin tax tables are slow to respond. We are in debt and are still not in the highest tax table. We need a more responsive system. The context from other states is helpful.

Mr. Bergan refers to a large sheet handout. This shows a history of the Wisconsin UI tax changes from 1982. This does not show the effects of those changes, but it gives a historical perspective about where we are today.

Question (Haine): What will be the taxable wage base in 2011? How relevant is it that the federal taxable wage base has not changed in a long time?

Mr. Bergan responds that the Wisconsin taxable wage base will be \$13,000 in 2011 and \$14,000 in 2012. Nationally, one of the things people suggest is raising the federal taxable wage base. The state wage base can make a big difference. For instance, Minnesota has the same top rate as Wisconsin, but Minnesota has a taxable wage base of \$26,000. For the same employee, they take in twice as much in revenue as we do. This is a significant difference for some of our categories where the heavy benefits come from. The federal wage base is \$7,000. The federal wage base is not a big issue for us though it would be an excellent thing if it were higher.

Comment (Buchen): The federal taxable wage base does not affect our system one way or another.

Tracey Schwalbe, UI Research Attorney, indicates that it sets a minimum taxable wage base for the states.

Question (Buchen): On the bottom of the handout, what is meant by the dollars per \$1,000? Does it apply to the same limited wage base? They are robust numbers.

Tom McHugh, UI Treasurer and Director of Bureau of Tax and Accounting, responds that this refers to per \$1,000 of taxable payroll and applied to the limited wage base. We would set the amount we wanted to collect for the interest assessment based on the estimated taxable payroll.

Mr. Bergan invites the Council to let him know if there is anything the department can do to provide material to facilitate the meeting on the 21st. The department is very focused on providing the best possible service during the winter workload and on providing information to the Council to get a handle the reserve fund issues.

Comment (Neuenfeldt): In addition to best practices of other states, it would be helpful to have information about where Wisconsin sits compared to other states in terms of benefits and tax rates.

Mr. Bergan indicates he has that information for the most recent quarter.

Comment (Penkalski): The most recent projections on where the reserve fund will be in the next year or two will be helpful. The unemployment projections seem to change every month.

Mr. Bergan responds that we will have that information. The numbers change but not dramatically month to month. On the 21st, we will start with the data previously provided by the department. We anticipate that the toughest year will be 2012. The projections go through 2013 and we do not see substantial reductions during that time if we do nothing. Doing nothing is really not an option so we will run those numbers as we talk about the different options. Some options provide for recurring revenue; for example, when you increase the wage base, you get more money first year or so and then it flattens out. We can start with the baseline projections we have at this point.

2. Minutes of Meeting September 22, 2009

Motion (Haine), seconded (Rainey), to approve the minutes of September 22, 2009, passes unanimously.

4. Proposal to modify reduction of benefits for receipt of pension payments

Mr. LaRocque indicates that reduction of benefits for receipt of pension payments is an item brought back to the Council at its request. Representative Van Akkeren proposed changes related to the reduction of benefits for a claimant's receipt of pension payments.

Ms. Schwalbe handed out draft language that is a department response to Rep. Van Akkeren's proposal. At the September 1 meeting, the Council passed a motion to approve the legislator's proposal and refer the issue back to staff to review the specifications of the bill and report back to the Council at the next meeting so the proposal could be included in the UI bill.

Rep. Van Akkeren proposed language that would provide for no benefit offset if a claimant received a distribution of their pension payment to satisfy a default of a loan taken more than 90 days prior to their discharge from employment. That was the language that was drafted in the LRB draft bill circulated to the Council. The Council discussed at the September 1 meeting whether to have no offset or to offset benefits in the week the distribution was considered paid. Because that is a little more consistent with what the department does with other things, the Department drafted language (handed out) that would allocate the lump sum pension payment to the week in which the pension payment is made. The draft is an alternative for the Council to consider. The language in LRB's draft bill would make no offset for the lump sum pension payment that is applied to a defaulted loan by the pension plan.

If the pension payment offsets benefits for one week (the week the lump sum payment is made), the fiscal effect would be to increase benefits annually by less than \$100,000 per year. If we were to eliminate the benefit offset (by eliminating the allocation) for any lump sum pension payment, the cost would be \$200,000 per year. Eliminating or simplifying the allocation of lump sum pensions to particular weeks reduces administrative effort.

Determining the amount of a pension payment that is attributable to the employee and the amount attributable to the employer remains necessary and generally takes a lot of administrative time.

Question (Lump): What do the references to "Section 32 and 33" mean?

Ms. Schwalbe responds that in the LRB draft bill, sections 32 and 33 contain the proposal to eliminate the offset for lump sum pension payments that originated with Rep. Van Akkeren. The handout shows language for these sections in the bill for the option of offsetting for defaulted loans in the week paid.

Comment (Haine): The Council has not yet voted on the bonus and profit sharing language in 108.05(3)(e) that would treat bonuses as received when paid. She is concerned with consistency. The pension payment is somewhat similar to that situation. She would like to see the bill internally consistent and consistent with tax law that says that things are generally taxable when received. She does not like the idea of the allocation over a period of time that is difficult to figure out and difficult for claimants to understand. The two statutes should be consistent.

Question (Yunk): You referenced that the proposal for having the reduction in the week the payment is received is consistent with what we do in other situations. If the concept of the proposal to make an offset for one week is consistent with how we apply offsets in other like situations, could you identify those other situations?

Ms. Schwalbe indicates that she was referring to how the department treats other pension payments when they are taxable. DOL makes a distinction for pension payments when they are taxable versus nontaxable. If a pension payment is taxable, we generally do an offset; if it is nontaxable we do not do an offset. If the person rolls over a pension payment and it is nontaxable, we are prohibited from offsetting the nontaxable distribution. The DOL distinguishes between taxable versus nontaxable distributions. Under the Van Akkeren proposal, the pension distribution would be taxable, but we would not offset even though it was taxable which would not be consistent with our treatment of other taxable pension distributions.

Question (Buchen): If a person saved and invested money and chose to cash it in, creating a taxable transaction with capital gains, they do not get an offset for that because it is their money, correct? Is it the same for a 401(k)?

Mr. LaRocque indicates that Wisconsin does not offset for all types of income. A 401(k) is considered a pension payment and would reduce benefits. Lutfi Shahrani, Director of Bureau of Benefits, notes that the offset is only for the pensions involving employer contributions, and only under certain conditions. The reduction is not for the part of the pension attributable to employee contributions.

Comment (Buchen): An IRA would not be offset and a defined benefit plan that is totally employer funded would offset. The taxability is not the trigger as much as whether it is an employee or employer contribution, and then if it is an employer contribution, if it is taxable.

Comment/Question (Buchen): Is this situation a loan against a pension and the payment is the proceeds of the loan?

Mr. LaRocque indicates that the situation identified by Rep. Van Akkeren involved a distribution from the pension plan to satisfy the loan when the loan was in default.

Comment (Petersen): The person might not get any cash out of the transaction. The person just has a taxable distribution to pay back the loan when the person has not been making any payments.

Comment (Haine): The issue here is when the person is involuntarily separated from their employment and they have an outstanding loan. At separation the loan would go into default and become income. The money for the loan could be employer or employee money in a pension plan.

Mr. LaRocque indicates that it is the employer-funded part of the plan that would lead to the offset and that is causing the issue. In general, the situation might be regarded as a hardship situation.

Comment (Buchen): It is a hardship situation because there is no money going to the person for living. They are paying off a loan.

Ms. Schwalbe indicates that the Council approved the Van Akkeren idea in concept [and broadened it to extend to all lump sum pension payments that might otherwise reduce benefits], but it was still undecided whether there should be any offset or one offset or how to deal with allocation.

Question (Buchen): Is the fiscal effect for the no offset option \$200,000?

Ms. Schwalbe indicates that the fiscal effect for the no offset option is \$100,000; the \$200,000 is the fiscal effect if we get rid of all allocation regardless of whether it is a default on a loan or not. When someone gets a lump sum, currently the department may allocated that over several weeks.

Comment (Buchen): The direction of eliminating allocation is attractive. If someone gets the money and considers it income, otherwise allocating it every time is difficult.

Mr. LaRocque indicates that determining the relative portions of the pension is awkward and very imprecise. Trying to figure out how much money an employee put in over time can really be imprecise. It is a challenge to do the work and it does not necessarily lead to better or fairer results.

Question (Lump): Is it possible that the costs associated with administering this are greater than the estimated fiscal costs?

Ms. Schwalbe indicates that the administrative costs are not charged to the reserve fund. Primarily, this delays benefits because it involves a lengthy investigation.

Question (Neuenfeldt): How do you monitor the investigations? How do you know that people are taking out their pensions and borrowing?

Mr. LaRocque indicates that it is a case-by-case investigation with questions to plan administrators, employees and employers. Mr. Bergan indicates that there are a variety of ways these issues might come up and then we would investigate it. Sometimes it happens without our knowledge.

Question (Lump): What does Rep. Van Akkeren have to say about the alternative proposal?

On September 1, Rep. Van Akkeren indicated at that time that he would be okay with a one week offset and that anyone could live with a one week offset if they know to expect it. In summary, there are three options. The first option is Rep. Van Akkeren's proposal to have no offset for a pension payment that is a payment resulting from a default of a loan from a pension. Another option is to eliminate the allocation and have one-week offset for a lump sum pension payment that includes an employee contribution. The third option to have no offset for any lump sum pension payment amount that includes an employee contribution. The third option has the \$200,000 fiscal effect.

Question (Buchen): Does the broader picture option cover the Van Akkeren situation?

Ms. Schwalbe responds affirmatively.

Question (Petersen): Would the third option be a one-week offset regardless of the lump sum amount? If someone gets \$10,000, would it offset only one week of benefits? In the loan situation, the person does not receive any money, but the benefits would be offset.

Ms. Schwalbe responds that this is correct. Presumably if someone is taking out a pension and not rolling it over they are likely doing it as a hardship. Then the department is taking the lump sum amount and allocating it over several weeks that the person may not be eligible for benefits.

Comment (Yunk): This was exactly the genesis of the issue. People are being caught in a Catch-22.

Comment (Petersen): There are likely penalties for the person for taking out the pension payment as well.

Comment (Haine): There are tax penalties for taking out the pension. It is fair to say that allocations do not make a lot of sense in terms of administrative time, accuracy, etc. If we are going to do anything in terms of receipt of money, it should just be the week paid.

Question (Buchen): How often are lump sum distributions more than \$10,000?

Comment (Haine): She used to manage many businesses; lump sum distributions could be more than \$10,000 often.

Carla Breber, Disputed Claims Lead Worker, indicates that it is not infrequent.

Question (Buchen): Does the department get 1,000 of these cases per year?

Dick Tillema, Policy Research Director, indicates that we get 200 per year in terms of lump sums. For most people, if they have an opportunity to do so, they would roll a pension over if they could.

Question (Rainey): Is the 200 per year based on past years or for this year? Is it trending higher?

Mr. Tillema indicates that it was based on the past 5 years. Mr. Bergan indicates that these would be more frequent now given the circumstances we are in. That is why Representative Van Akkeren came to the Council; these situations are more likely to occur in these economic times.

Mr. LaRocque indicates that the rest of the items on the agenda have been presented to the Council and are on the agenda so the Council can take action today.

Question (Buchen): Are these all of the unresolved department proposals that would go into a UI bill at this time?

Mr. LaRocque responds affirmatively. The bill draft includes everything that has been proposed except the approved training proposal presented at the last meeting.

- 5. Advisory Council Committee Recommendations Regarding Definition of “Employee”**
 - a. Improve seven-of-ten test for “employee”**
 - b. Repeal DWD 105 (Truckers)**
 - c. Repeal DWD 107 (Loggers)**

and

- 6. Advisory Council Committee Recommendations Regarding Definition of “Employment”**
 - a. Exclude from “employment” personal care services for family**
 - b. Review mystery shoppers**
 - c. Review writers and news reporters**

7. Department proposals for changes to the unemployment insurance law, Wis. Stat. Chapter 108, presented at previous meetings

8. UI Bill: LRB Draft 09-3069/6

9. Department proposal to revise DWD 128, Able to Work and Available for Work

10. Department proposal to revise DWD 129, Benefit Claiming Procedures

Motion to meet in closed session

Motion (Yunk), seconded (Buchen), is passed 9 - 0 to go into closed session pursuant to section 19.85(1)(ee) of the Wisconsin Statutes to discuss items 5 through 10 on the agenda. Closed sessions by the management and labor members of the Council, respectively, began at 10:24 p.m.

Meeting in open session resumed at 12:30 p.m.

Motion (Buchen), seconded (Neuenfeldt), to approve D09-04 Protect Employees and Witnesses in UI Cases from Retaliation with the amendment that the maximum penalty be \$1,000 rather than \$2,000, and to approve D09-10 Amend Disqualification for Hours Worked: Reduce from 35 to 32 Hours, D09-12 Amend Exceptions to Quit Disqualifications: Change Thresholds to 32 Hours, and D09-13 Treat Bonus Payments as “Earned” When Paid expanded to also include all lump sum pension payments so that they offset in the week they are paid, and also to approve DWD 128 Able to Work and Available for Work and DWD 129 Benefit Claiming Procedures to go to hearing, reserving the right to give final approval after the hearings.

Discussion of the Motion:

Question (Mr. Bergan): For the pension payment item, does this mean bonuses will be earned in the week paid and that pension payments will be offset in the week paid?

Mr. Buchen responds affirmatively.

Question (Haine): For the pension payment issue, is there a broader word that can be used to include 401ks, etc., such as "retirement plan"?

Mr. LaRocque indicates that the statute defines "pension payment" to include 401ks, etc. To clarify, the motion is to approve D09-13 to consider bonus payments as earned when paid and as an adjunct to that proposal, to deal with the pension issue and treat lump sums as paid in the single week paid. It does not deal with any other types of pay.

Question (Buchen): Would this be inclusive of the Van Akkeren proposal?

Mr. LaRocque responds affirmatively.

Comment (Neuenfeldt): On the debit card issue, it is good the issue will go to a public hearing. Before final approval, as the department does the RFP it will be important to see what the fees are. It will be hard to give final approval without knowing the fee information.

Mr. LaRocque indicates that approval of the rule changes to DWD 128 and DWD 129 today is with the understanding that after the public hearing the rules will come back to the Council for approval.

Question (Neuenfeldt): When is the RFP process?

Mr. Bergan responds that the RFP is almost ready.

The Motion is approved 9 - 0.

Mr. LaRocque indicates that an issue was raised in closed session regarding the proposal previously approved on the federal tax intercept of fraud overpayments. The statute as drafted does not use the term "fraud" but it has a reference to the federal law in effective as of June 1, 2009, which is limited to recovery of fraud overpayments. We can put the word fraud in the statutory language. It will be at worst redundant and harmless.

Comment (Buchen): That is fine.

Question (Neuenfeldt): What can the Council expect from the department on October 21?

Mr. Bergan indicates that the department would have some general information from DOL characterizing our tax system generally. We will complement that by summarizing the key issues and comparing our provisions with other states. He has suggested giving a history on benefit side similar to one provided on tax side today if that would be helpful. We will also provide a list of alternative options and possibilities. In broad terms, he suggests we spend some time at the outset of the meeting setting a context for where we are and what we need to

accomplish. Then discuss in open session any clarifications needed on any of the options available. Then the Council can decide if it should caucus.

Comment (Neuenfeldt): That sounds good. We can also look at adding additional proposals at that point when we caucus.

Meetings are scheduled for Wednesday October 21, Thursday November 19 and Thursday December 17. Mr. Bergan indicates that the Council should keep the option open for additional meetings in between if necessary.

The Council and the department will plan for approximately a four-hour meeting on October 21. The next meeting of the Council will be held at the Department of Corrections. The department will send information about parking.

Comment (Neuenfeldt): He would like a list of occupations that are not in the above average category in growth in numbers of jobs and not considered "high demand."

Motion (Buchen), seconded (Yunk), to adjourn passes 9 - 0.