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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**

## Senate

### Record of Committee Proceedings

#### **Committee on Labor, Elections and Urban Affairs**

##### **Senate Bill 649**

Relating to: various changes in the unemployment insurance law and providing a penalty.

By Senator Coggs; cosponsored by Representative Sinicki, by request of Department of Workforce Development.

March 26, 2010      Referred to Committee on Labor, Elections and Urban Affairs.

April 8, 2010      **PUBLIC HEARING HELD**

Present:    (4)    Senators Coggs, Wirch, Lehman and Grothman.

Absent:    (1)    Senator A. Lasee.

##### Appearances For

- Hal Bergan — Department of Workforce Development
- Andy Feldman — Department of Workforce Development
- James Buchen — Wisconsin Manufacturer's & Commerce

##### Appearances Against

- None.

##### Appearances for Information Only

- None.

##### Registrations For

- Spencer Coggs — Senator
- Christine Sinicki — Representative
- Mark Reihl — Wisconsin State Council of Carpenters

##### Registrations Against

- None.

##### Registrations for Information Only

- None.

April 14, 2010      **EXECUTIVE SESSION HELD**

Present:    (5)    Senators Coggs, Wirch, Lehman, A. Lasee and Grothman.

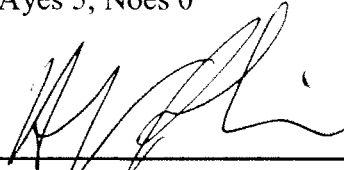
Absent: (0) None.

Moved by Senator Wirch, seconded by Senator Lehman that  
**Senate Bill 649** be recommended for passage.

Ayes: (5) Senators Coggs, Wirch, Lehman, A. Lasee  
and Grothman.

Noes: (0) None.

PASSAGE RECOMMENDED, Ayes 5, Noes 0



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Adam Motkin  
Committee Clerk

# Vote Record

## Committee on Labor, Elections and Urban Affairs

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Date: Wednesday, April 14, 2010

Moved by: WIRCH Seconded by: LEHMAN

AB \_\_\_\_\_ SB 649 \_\_\_\_\_ Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_ SJR \_\_\_\_\_ Appointment \_\_\_\_\_  
 AR \_\_\_\_\_ SR \_\_\_\_\_ Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
 A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:  
 Passage     Adoption     Confirmation     Concurrence     Indefinite Postponement  
 Introduction     Rejection     Tabling     Nonconcurrency

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Senator Spencer Coggs, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Robert Wirch</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator John Lehman</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Alan Lasee</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Glenn Grothman</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	<u>5</u>	<u>0</u>	_____	_____

Motion Carried       Motion Failed



**WMC**  
WISCONSIN'S BUSINESS VOICE

TO: Committee on Labor, Elections and Urban Affairs

FROM: James A. Buchen, Vice President of Government Relations, Wisconsin Manufacturers and Commerce  
Phil Neuenfeld, Secretary-Treasurer of the Wisconsin State AFL-CIO

DATE: April 8, 2010

RE: Senate Bill 649 Support for Unemployment Insurance Advisory Council Reform Recommendations

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### **Background**

We currently serve as Labor and Management Representatives on the Wisconsin Unemployment Advisory Council (UIAC). Wisconsin and the nation have faced unprecedented economic challenges in recent years. The nation's unemployment insurance system has faced even greater challenges, continuing to pay unemployment benefits to millions of Americans, including unprecedented numbers here in Wisconsin.

The Wisconsin Unemployment Advisory Council recommended changes to the employer tax structure and employee eligibility requirements two years ago. The Legislature enacted those changes with the expectation that they would improve the solvency of the Wisconsin Unemployment Insurance system. However, the intervening economic collapse of business and industry depleted all of the Wisconsin UI Trust Fund reserves, and borrowing from the Federal Government to pay state UI benefits has been continuing for over a year.

During this period the UIAC has continued to monitor the Trust Fund solvency. We have considered various approaches to address the solvency situation. However, the Management and Labor Representatives jointly concluded that it is not timely to take further steps that would adjust either the tax or benefit structure. We need to analyze any further steps, if any, Congress may take to address the UI situation nationally that might impact the direction of state UI policy.

However, we have negotiated a package of law changes that is before you today. There are no dramatic provisions in this legislation, and many of them already came before this Committee late last year for consideration.

First, we are proposing law changes that will make the definition of full time employment consistent throughout the statute. Particularly during this period of high claims volume these changes will make administration of the UI Act simpler for those on the front lines of determining benefit eligibility.

Recommendations impacting employers include clarifying the deadline for employers making voluntary tax contributions that will reduce their tax rates. We have also recommended a law change to the voluntary contribution statute that addresses companies with high claims volume where they temporary closing is due to a natural disaster, such as occurred with the Patrick Cudahy Company in 2009.

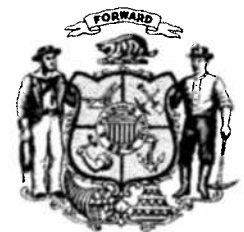
Additional recommended law changes permit the UI Division to collect benefit overpayments from Federal tax refunds, and protections for UI claimants and witnesses from workplace retaliation. Again, we believe that these changes will improve administration of the UI Act.

A final recommendation is in the definition of what constitutes an employee under the Wisconsin Unemployment Insurance Act. Currently, in order to establish the status as an independent contractor and individual must meet at least seven parts of a ten part test. In an effort to simplify this test, the Council is recommending a nine part test of which the contractor must meet six parts of the test. In addition, changes to the remaining tests are proposed based upon more recent decisions of the Wisconsin Labor and Industry Review Commission that we believe will clarify this part of the UI Statute.

In closing we appreciate the long standing consideration that the Assembly Labor Committee has extended to the UIAC and to the agreed bill process under both Democrat and Republican Chairs. The Council Members appreciate the guidance that, from time to time, the Chairs have provided to the UIAC during the period of the Council's deliberations so that when we bring a bill forward for your review and approval it receives expeditious consideration.



# WISCONSIN STATE LEGISLATURE



**Testimony of Hal Bergan**  
**Administrator of the Unemployment Insurance Division**  
**On Senate Bill 649, relating to changes in**  
**Wisconsin's Unemployment Insurance Law**  
**April 8, 2010**

Chairperson Cogg and members of the Committee: I appreciate the opportunity to be here this morning to testify in support of Senate Bill 649. My task today is to describe the provisions of this bill, with special emphasis on those provisions which were added to Senate Bill 649 since it was before the Committee in October. Before I move to the new provisions I want to highlight again a couple of provisions that are carried over from the previous bill that are of particular relevance.

**Amend Reduction of Benefits for Lump Sum Pension Distributions**

Pension payments reduce the amount of unemployment (UI) benefits in the weeks in which a pension payment is received. §108.05. Current law requires that a pension payment that is received by a claimant other than on a periodic basis (a lump sum payment) be allocated to a series of weeks and reduces the amount of UI benefits in those weeks. The change will treat the lump sum pension payment as having been paid in full, rather than allocated, only in the week in which it is paid. The effect will assure that a UI benefit will be reduced as a result of the lump sum payment in no more than a single week. This provision originated with Rep. Terry Van Akkeran.

**Enable Intercept of Federal Tax Refunds for UI Fraud**

The bill amends §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. The department estimates that the change will increase revenue to the unemployment reserve fund by \$1.3 million annually.

**NEW PROVISIONS**

***Harmonize Approved Training and Extended Training***

*Claimants may be eligible for unemployment benefits while they are enrolled in certain approved training programs. Claimants who exhaust all rights to benefits and are enrolled in an approved training course that meets certain qualifications also potentially qualify to receive up to 26 weeks of additional benefits while enrolled in that training. The bill broadens the types of training considered approved training to include recently created department programs, harmonizes the requirements for benefits under the regular approved training and extended training programs, prohibits benefit disqualifications and reductions when claimants are enrolled in certain federally funded training programs, adds new federally-required protections for claimants in certain federally funded training programs, and shifts charges for claimants in approved training to the balancing account. The bill also allows the department to determine whether a claimant is enrolled in approved training before determining whether a claimant meets certain other requirements to receive benefits, enabling faster payment of benefits. §§108.04(16) and 108.06(7).*



### **Modify limitations on voluntary contributions**

Create exception to the statutory limitations on voluntary contributions. §108.18(7). Under current law an employer may make a voluntary contribution to its UI reserve account. The law limits the amount of such voluntary contributions such that the employer cannot buy down its tax rate by more than a single tax rate level each year. Reason for the limit: While the effect of this limit is revenue neutral to the employer's account, the voluntary contributions result in lower solvency tax rate levels and therefore, buying down tax rates by voluntary contributions will generate lower solvency contributions for employers than they otherwise would pay.

The change will exempt the employer from the limit on the voluntary contribution amount under circumstances where that employer has suffered physical damage to its business caused by a catastrophic event and through no primary fault of its own, and incurs benefit charges for layoffs due to the physical damage to the business. The change will allow the employer to make payments to restore its reserve account balance and tax rate, and will essentially allow an employer to be made whole vis-à-vis its unemployment tax rate after a catastrophe. An employer must submit proof that workers were laid off due to the catastrophic event.

### **Repeal Assurance Requirement Imposed on Indian Tribes**

Government, nonprofit and tribal government employers are permitted to reimburse the unemployment reserve fund for unemployment benefits paid on their accounts, rather than pay quarterly contributions. Currently, nonprofit and tribal government employers must provide financial security ("assurance" in the form of a deposit account or bond) for those employers' statutory reimbursement obligations. The bill repeals the statutory provisions requiring Indian tribes to provide the financial security. Other local governments are not required to post an assurance. §108.152.

### **Exclude from "Employment" Personal Care Services Performed by an Individual for Family Members**

The bill eliminates unemployment contributions and benefits for an individual providing personal care and companionship services directly to the individual's family member. §108.02(15)(km).

### **Improve Definition of "Employee"**

The UI bill passed two years ago required the UI Advisory Council to review the current definition of "employee". The Council appointed a subcommittee consisting of Dennis Penkalski from the labor side and Ed Lump from the employer side and Dan LaRocque, the Council chairperson. They met for many hours on this topic and the Council agreed with their recommendations.

Essentially this is a provision that governs which workers are covered by unemployment insurance and which are not. Our current language has been in place since 1996, with a modest change in 2000. Since then there have been many decisions by adjudicators, administrative law judges, and the Labor and Industry Review Commission. The language proposed in the bill is meant to update the statute and clarify the requirements. We do not expect that this new test will greatly change the equation in determining who is an independent contractor and who is an employee. It should, however, make the law easier to apply and interpret. It is the Department's intention to significantly increase our efforts to educate employers about these definitions in order to avoid inadvertent violations of the provisions.

The scope of unemployment insurance coverage of workers is largely determined by the definition of "employee" in the unemployment insurance law. The bill amends the seven-of-ten test, §108.02(12)(bm), for (definition of) "employee" that applies to workers performing services for for-profit employers other than employers of truckers and loggers. The changes:

- a. Import several factors that have been regarded as sound indicators of proper employee classification by the courts and Labor and Industry Review Commission. These factors were applied to for-profit employers in Wisconsin prior to the creation of the seven-of-ten test in the 1990s and have been part of the longstanding test for nonprofit and government employers.
- b. Eliminate several factors that have diluted the test, made it less effective and encouraged manipulation and modify factors that have confused the public and the agencies administering the law.
- c. Improve clarity, predictability and fairness, by using simpler and clearer language and by eliminating the confusion that has arisen from combining dissimilar factors.
- d. Restore a balance between the two basic elements of the test for "employee": freedom from control and direction and independently established business.
- e. Retain intact three factors that have been observed to be working well and are relatively well understood, as shown by the experience of the department and the decisions of the Commission.
- f. Maintain the flexibility of application that the seven-of-ten percentage allows.

#### **The current seven-of-ten test for "employee" and proposed amendments**

Wis. Stat. §108.02(12)(bm) provides that an individual performing services for an employing unit other than a government unit or nonprofit organization in a capacity other than as a logger or trucker, is **not an employee** (i.e., is an independent contractor) if the employing unit satisfies the department that the individual meets 7 or more of the 10 factors. As amended the employer must satisfy the first, new factor and 6 of the other 9 factors. The current ten-part test is shown below. Proposed amendments are shown in bold.

1. The individual holds or has applied for an identification number with the federal internal revenue service **[to be repealed by this bill]**.
2. The individual has filed business or self-employment income tax returns with the federal internal revenue service based on such services in the previous year or, in the case of a new business, in the year in which such services were first performed **[to be repealed by this bill]**.

**[This bill will add "freedom from control or direction" and make it an essential element of the ten criteria to any determination in favor of an employer under this test. The statute will read:**

1. **The services of the individual are performed free from control or direction by the employing unit over the performance of his or her services.**

**In determining whether services of an individual are performed free from control or direction, the department may consider the following nonexclusive factors:**

- a. **Whether the individual is required to comply with instructions concerning how to perform the services.**
- b. **Whether the individual receives training from the employing unit with respect to the services performed.**
- c. **Whether the individual is required to personally perform the services.**
- d. **Whether the services of the individual are required to be performed at times or in a particular order or sequence established by the employing unit.**
- e. **Whether the individual is required to make oral or written reports to the employing unit on a regular basis. ]**

**[As amended by this bill, the ten-part test will require that the employer establish that the individual worker meets 6 or more of the following 9 conditions:**

2. **[This factor in the test will be added by this bill: The individual advertises or otherwise affirmatively holds himself or herself out as being in business.]**
3. **The individual maintains a separate business with his or her own office, equipment, materials and other facilities [replaced with: The individual maintains his or her own office, or performs most of the services in a facility or location chosen by the individual and uses his or her own equipment or materials in performing the services.]**
4. **The individual operates under contracts to perform specific services for specific amounts of money and under which the individual controls the means and methods of performing such services [replaced with: The individual operates under multiple contracts with one or more employing units to perform specific services.]**
5. **The individual incurs the main expenses related to the services that he or she performs under contract [retained unchanged as a factor in the test].**
6. **The individual is responsible for the satisfactory completion of the services that he or she contracts to perform and is liable for a failure to satisfactorily complete the services [replaced with: The individual is obligated to redo unsatisfactory work for no additional compensation or is subject to a monetary penalty for unsatisfactory work.]**
7. **The individual receives compensation for services performed under a contract on a commission or per-job or competitive-bid basis and not on any other basis [repealed by this bill and replaced with a new factor: The services performed by the individual do not directly relate to the employing unit retaining the services.]**
8. **The individual may realize a profit or suffer a loss under contracts to perform such services [retained unchanged as a factor in the test].**
9. **The individual has recurring business liabilities or obligations [retained unchanged as a factor in the test].**
10. **The success or failure of the individual's business depends on the relationship of business receipts to expenditures [repealed by this bill and replaced with: The individual is not economically dependent upon a particular employing unit with respect to the services being performed.]**

### **Amend Exceptions to Quit Disqualifications: Change Thresholds to 32 Hours**

Two quit exceptions, §§108.04(7)(k) and 108.04(7)(o), apply where a claimant works two jobs concurrently. Section 108.04(7)(k) allows a claimant to quit a job providing up to 30 hours per week without disqualification where the 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 the 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.

### **Amend Disqualification for Full-Time Work with 80% Liable Employer: Reduce “full-time” from 35 to 32 Hours**

When a claimant works for an employer that paid at least 80% of the wages in the claimant’s base period, the law disqualifies the claimant from receiving benefits in any week that the wages are for full-time work at a rate of pay that is the same or greater than the claimant earned in the highest paid quarter of the base period. The proposal would change “full-time” for this purpose, §108.05(3)(b), from 35 hours to 32 hours. First applies in July 2011.

### **Treat Bonus Payments as “Earned” When Paid**

A bonus payment that is earned in a week of UI benefit eligibility will reduce the amount of UI benefits. The department must investigate and determine what week a bonus payment has been “earned”. The change will clarify that a bonus is earned in the week in which the bonus is paid by the employer. The change will simplify administration and reinforce the department’s interpretation of the current law that generally considers a bonus payment to be earned in the week in which it is paid. §108.05(3)(e).

### **Establish Firm Deadline for Voluntary Contributions**

The bill conforms the provision on timeliness for payment of voluntary contributions to the provision on timeliness for reports and contributions generally and enables greater administrative efficiency. §108.18(7)(d).

### **Amend Special Assessment for Interest to Allow Unused Balance to Revert to Reserve Fund**

The bill amends provisions on special assessment of employers for interest on federal borrowing to permit the department to credit the balancing account with any amounts from the special assessment that exceed amounts necessary to pay interest on federal loans. §§108.19(1m) and 108.20(3).

### **Clarify Exceptions for Exclusions from Employment for Indian Tribes**

The bill clarifies 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. §108.02(15)(f). The bill clarifies that individuals receiving work relief or work training programs funded by tribes is excluded from employment unless a tribe elects otherwise. §108.02(15)(g)1.

**Clarify that the Department is an “Adverse Party” in Employers’ Circuit Court Actions to Review Tax Decisions**

The bill reinforces the interpretation of §108.10(4) that the department is an “adverse party” when an employer seeks review in the circuit court of a Labor and Industry Review Commission decision. The change will 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.

**Incorporate Requirement that Professional Employer Organizations (PEOs) Register with Department of Regulation & Licensing**

The bill amends §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.

**Correct Forfeiture Language to Reflect Statutory Penalties**

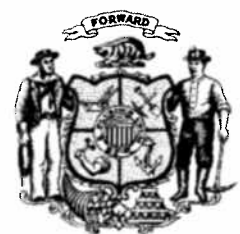
The bill makes a technical change to §108.04(11)(be), a provision that prescribes monetary penalties (“forfeitures”) where claimants engage in concealment of work, wages and other matters. Prior legislation inadvertently contained language (“and be disqualified for benefits”) incorrectly suggesting additional sanctions were intended. Other existing provisions clearly and effectively compel a claimant to repay overpaid benefits, which assures that concealment will not result in retention of fraudulently obtained benefits. The correction to remove the words “and be disqualified for benefits” will eliminate the possibility of unintended disqualification for benefits.

**Protect Claimants and Witnesses in UI Cases from Retaliation**

The bill strengthens protection of claimants and creates 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 increases certain penalties. §108.24.



WISCONSIN STATE LEGISLATURE



**Testimony by Andrew Feldman**  
**Executive Assistant, Dept. of Workforce Development**  
**Before the Senate Committee on Labor, Elections, and Urban Affairs**  
**April 8, 2010**

Good morning. My name is Andy Feldman and I am the Executive Assistant at the Wisconsin Department of Workforce Development.

Seated next to me is Hal Bergan, the administrator of the Unemployment Insurance Division.

On behalf of Secretary Gassman, I'd like to thank Chairman Coggs and the members of the Committee for allowing us to testify today in favor of Senate Bill 649, legislation that makes various changes to Wisconsin's Unemployment Insurance program.

SB 649 is the product of the deliberations of the state's Unemployment Insurance Advisory Council, a ten member body comprised of employee and employer representatives.

The bill was approved by the Council by a vote of 9-0, with one member absent who supports the bill.

To provide some brief background, this has been a challenging year for the Unemployment Insurance program.

With a deep national recession, the program has provided benefits to a record number of Wisconsin citizens—currently about 245,000 individuals.

In 2009 the program paid out \$3.1 billion in benefits, compared to just under \$1 billion in 2007, helping support Wisconsin workers and families and adding valuable spending to local communities.

In the face of these challenges, we have worked hard to maintain and improve customer service by improving processes, adding staff and phone lines, adding hours of service, and other improvements.

These actions have ensured that most Wisconsinites applying for benefits receive their first check quickly, within a week, and wait times on the phones have fallen dramatically.

With that background, the bill before you makes further improvements to the UI program, including both administrative and substantive issues.

From an administrative standpoint, it streamlines some processes and makes changes that add consistency to the program.

These changes will benefit claimants and employers.

Much of the bill is identical to the provisions of SB 366, which has already had a hearing before this committee.

SB 649 also includes some new provisions that make important substantive improvements to the law.

Specifically, the bill includes provisions dealing with the following issues.

- The definition of an employee or an independent contractor.
- An exclusion from coverage for an individual providing personal care or companionship to a family member
- Consistency and clarification in the law relating to approved training and extended training
- Assurance requirements for Native American tribes
- And a change relating to voluntary contributions for employers sustaining catastrophic disruptions in businesses

The bill does not include significant changes to affect the solvency of the UI Reserve Fund.

The Council knows that changes will be needed in the future, but believes that this is not the best time to enact those changes.

In a letter to Senator Coggs and Representative Sinicki dated March 4<sup>th</sup> of this year, Phil Neuenfeldt, Legislative Director of the Wisconsin State AFL-CIO, and James Buchen, Vice President of Wisconsin Manufacturers & Commerce, stated:

“...at this point in the economic cycle we do not believe it would be prudent to increase taxes or reduce benefits. Neither employers nor laid off employees are in a position to shoulder an additional economic burden at this time.”

The Department concurs with those sentiments.

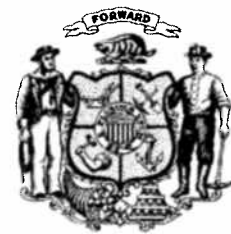
Thanks again for the opportunity to address the Committee.

Hal Bergan will now provide a few more details about the bill, with an emphasis on the provisions that have been added since last fall.





WISCONSIN STATE LEGISLATURE



LEVA Exec + Hearing  
4/8/10

SB 649

EXEC

Kumbaya on SB172  
no GOP, quick roll

HEARING

~~SB~~ Ronald Polacek

no one showed or registered

SB435

Kevin Kennedy

- has written testimony
- X - ? on retaining records in financially feasible way
  - paper printout + ballots retained
  - problem is space on memory card
  - cost prohibitive to retain data electronically

John Washburn

- no written testimony, but a lot of supporting material
- takes some shots at Kevin + GAB
- impossible to check election complaints
- goes through his "sub" section by section
- central count tabulation
- concern with a personal challenge that he filed
- wants election records defined as open records

①

## SB 435 cont.

### - John Washburn cont.

- thinks vendors are lying
  - SC? on his "sub"
  - disputes vendors claims
- JL? on votes shd be open records
  - the totals shd be available
- SL? - alleging ballot box stuffing?
  - not that stuffing happened, just a records retention issue

### - Shane Falk.

- ~~the~~ addresses Washburn's points
- 73% of state uses large optical scan machine
- cost prohibitive to remove + store
- still required to retain for 22 mos. after fed. election
- ballots only kept for 30 days.
- Assembly added amendment to address new equipment that utilizes flash drives
- keep 22 mo. retention under amendment if on new media
- Ch. 19 exempts products w/ code + other info that is proprietary + ensures security
- canvasses are retained for 10 years
- GAB tests voting equipment
  - SC? on flash drive amendment
  - AAI to AB 446 (?) explained
  - GAB supports

(2)

SB612Kenn Taylor

- has written testimony
- SC? on "ban the box"
  - not trying to give leg up, just remove disadvantage
  - let credentials speak to qualification for interview
- ~~~~~

Chris Ahmety

- no written, brief remarks

Gordon Leech

- no written testimony, has some supporting documents
- testifying for IRR @ State Bar
- WE Employer Relations Assn.
- existence of ~~convicted~~ conviction record bad enough, regardless of what for
  - SC? on lack of employable skills
  - bill doesn't enlarge law

Hans Simpson

- convicted felon
- doesn't want to be burden on state, wants to add to tax eds
  - wants ability to tell story, can't do that without getting interview
  - used to own & run a large international business

John Metcalf & Robert Schreiber

- John has written testimony
- gives brief background also
- Safe Place statute in WE law for current employees

SB 622 cont.

John McKeef + Robert Schweiber cont.

- Robert has no written remarks
- on opposite side from Gardan Leech
- WA already offers more protection than other states
- ~~mm~~

David Pifer

- has written testimony
- ad libs a bit
- doesn't prevent asking at interview
- provides chance for redemption
- current system is discriminatory
- arguments against are red herrings
  - SC? - fair to applicant w/ pile system on phone
  - act of picking up phone is sign of selection

SB 624

John Lehman

- has written testimony
  - SC? - just expansion
  - yes

Bruce Lindsay

- reads written testimony, but passes out bullet points
- termed as a simple legislative fix

SB649

Hal Bergen, Andy Feldman, James Buchen

- all 3 have written testimony
- Buchen extemporaneous on no changes to benefits or taxes
- Bergen reads part of written, skips rest
- SL? on fund solvency
  - ARRA paid for most extensions by feds
  - \$1.37b owed to feds now, project owing \$1.7b by end of year
- want interest forgiveness more than principal forgiveness
- SL? - how much from employers in 2009
  - \$635m

SB605

SL

- has written testimony

Terry McGowan

- has written testimony, but no copies before testimony
  - SL? at meeting tomorrow
  - confident meeting will produce positive results

Robb Kahl

- highlights provisions of coming amendment
- mostly off the cuff remarks on reasons opposition is wrong
- won't lighten up on safety at meeting tomorrow
- might have remarks, hard to tell
- some things that won't be able to be addressed
- got unanimous endorsement from building trades this morning

5



- ▶ Home
- ▶ Lobbying in Wisconsin
- ▶ Organizations employing lobbyists
- ▶ Lobbyists

Presented by the Wisconsin  
Government Accountability Board



as of Wednesday, April 07, 2010

**2009-2010 legislative session**  
**Legislative bills and resolutions**

(search for another legislative bill or resolution at the bottom of this page)

**Senate Bill 649**

various changes in the unemployment insurance law and providing a penalty. (FE)

**TEXT**  
sponsors  
LRB analysis

**STATUS**  
committee actions and  
votes  
text of amendments

**COST & HOURS**  
of lobbying efforts  
directed at this  
proposal

Organization		These organizations have reported lobbying on this proposal:	Place pointer on icon to display comments, click icon to display prior comments		
Profile	Interests		Date Notified	Position	Comments
◆	◆	Forest County Potawatomi Community	3/30/2010	↑	
◆	◆	National Federation of Independent Business	4/5/2010	?	
◆	◆	Wisconsin Builders Association	3/31/2010	?	
◆	◆	Wisconsin Paper Council	4/8/2010	↑	

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**House**

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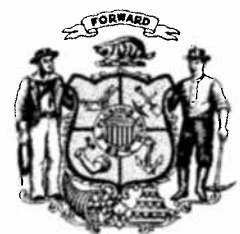
**Proposal Number**  (enter proposal number)

**Legislative Session**  ▾





WISCONSIN STATE LEGISLATURE



## **SUMMARY OF 2010 UNEMPLOYMENT INSURANCE BILL**

### **I. CHANGES AFFECTING BENEFITS AND ADMINISTRATION OF THE PROGRAM**

#### **Amend Reduction of Benefits for Lump Sum Pension Distributions**

Pension payments reduce the amount of unemployment (UI) benefits in the weeks in which a pension payment is received (§108.05). Current law requires that a pension payment that is received by a claimant other than on a periodic basis (a lump sum payment) be allocated to a series of weeks and reduces the amount of UI benefits in those weeks. The change will treat the lump sum pension payment as having been paid in full, rather than allocated, only in the week in which it is paid. The effect will assure that a UI benefit will be reduced as a result of the lump sum payment in no more than a single week.

#### **Treat Bonus Payments as “Earned” When Paid**

Current law requires that a bonus payment that is earned in a week of UI eligibility will reduce the amount of UI benefits (§108.05). The change will reinforce the department’s current interpretation of the law that, for purposes of calculating UI benefits, considers a bonus payment (usually) to be earned in the week in which it is paid by the employer.

#### **Harmonize Approved Training and Extended Training**

Claimants may be eligible for unemployment benefits while they are enrolled in certain approved training programs. Claimants who exhaust all rights to benefits and are enrolled in an approved training course that meets certain qualifications also potentially qualify to receive up to 26 weeks of additional benefits while enrolled in that training. The bill broadens the types of training considered approved training to include recently created department programs, harmonizes the requirements for benefits under the regular approved training and extended training programs, prohibits benefit disqualifications and reductions when claimants are enrolled in certain federally funded training programs, adds new federally-required protections for claimants in certain federally funded training programs, and shifts charges for claimants in approved training to the balancing account. The bill also allows the department to determine whether a claimant is enrolled in approved training before determining whether a claimant meets certain other requirements to receive benefits, enabling faster payment of benefits.

#### **Amend Exceptions to Quit Disqualifications: Change Thresholds to 32 Hours**

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.

#### **Amend Disqualification for Full-Time Work with 80% Liable Employer: Reduce “full-time” from 35 to 32 Hours**

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, the law 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" for this purpose, §108.05(3)(b), means 32 hours. First applies in July 2011.

## **II. CHANGES PRIMARILY AFFECTING EMPLOYERS**

### **Modify limitations on voluntary contributions**

Create exception to the statutory limitations on voluntary contributions. §108.18(7). Under current law an employer may make a voluntary contribution to its UI reserve account. The law limits the amount of such voluntary contributions such that the employer cannot buy down its tax rate by more than a single tax rate level each year. Reason for the limit: While the effect of this limit is revenue neutral to the employer's account, the voluntary contributions result in lower solvency tax rate levels and therefore, buying down the rate by voluntary contributions will generate lower solvency contributions than otherwise.

The change will exempt the employer from the limit on the voluntary contribution amount under circumstances where that employer has suffered physical damage to its business caused by a catastrophic event and through no primary fault of its own, and incurs benefit charges for layoffs due to the physical damage to the business. The change will allow the employer to make payments to restore its reserve account balance and tax rate. An employer must submit proof that workers were laid off due to the catastrophic event.

### **Establish Firm Deadline for Voluntary Contributions**

Conform the provision on timeliness for payment of voluntary contributions to the provision on timeliness for reports and contributions generally, §108.18(7)(d). Enables greater administrative efficiency.

### **Amend Special Assessment for Interest to Allow Unused Balance to Revert to Reserve Fund**

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

### **Repeal Assurance Requirement Imposed on Indian Tribes**

Government, nonprofit and tribal government employers are permitted to reimburse the unemployment reserve fund for unemployment benefits paid on their accounts, rather than pay quarterly contributions. Currently, nonprofit and tribal government employers must provide financial security ("assurance" in the form of a deposit account or bond) for those employers' statutory reimbursement obligations. The bill repeals the statutory provisions requiring Indian tribes to provide the financial security.

### **Clarify Exceptions for Exclusions from Employment for Indian Tribes**

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. §108.02(15)(f). Clarify that individuals receiving

work relief or work training programs funded wholly by tribes is excluded from employment unless a tribe elects otherwise. §108.02(15)(g)1.

#### **Clarify that Department is an “Adverse Party” in Employers’ Circuit Court Actions to Review Tax Decisions**

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.

#### **Incorporate Requirement that Professional Employer Organizations (PEOs) Register with Department of Regulation & Licensing**

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.

### **III. STRENGTHEN PROGRAM INTEGRITY AND FAIRNESS**

#### **Improve Definition of “Employee”**

Amend the seven-of-ten test, §108.02(12)(bm), for (definition of) “employee” that applies to for-profit employers other than employers of truckers and loggers. The changes:

- a. Import several factors that have been regarded as sound indicators of proper employee classification by the courts and Labor and Industry Review Commission. These factors were applied to for-profit employers in Wisconsin prior to the creation of the seven-of-ten test in the 1990s and have been part of the longstanding test for nonprofit and government employers.
- b. Eliminates several factors that have diluted the test, made it less effective and encouraged manipulation and modifies factors that have confused the public and the agencies administering the law.
- c. Improves clarity, predictability and fairness, by using simpler and clearer language and by eliminating the confusion that has arisen from combining dissimilar factors.
- d. Restores a balance between the two basic elements of the test for “employee”: freedom from control and direction and independently established business.
- e. Retains in tact three factors that have been observed to be working well and are relatively well understood, as shown by the experience of the department and the decisions of the Commission.
- f. Maintains the flexibility of application that the seven-of-ten percentage allows.

#### **Exclude from “Employment” Personal Care Services Performed by an Individual for Family Members**

Eliminate unemployment contributions and benefits for an individual providing personal care and companionship services directly to the individual's family member. §108.02(15)(km).

#### **Enable Intercept of Federal Tax Refunds for UI Fraud**

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.

**Correct Forfeiture Language to Reflect Statutory Penalties**

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).

**Protect Claimants and Witnesses in UI Cases from Retaliation**

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. §108.24.