



## Legislative Fiscal Bureau

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TO: Members  
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: Conference Committee Substitute Amendment to SS AB 11

This document summarizes the provisions of the Conference Committee Substitute Amendment to SS AB 11.

On January 31, 2011, this office released general fund tax collection and expenditure estimates for 2010-11 as well as tax collection estimates for the 2011-13 biennium. That report projected a net, general fund closing balance of \$56.4 million for the 2010-11 fiscal year.

Under the Conference Committee's report, the net, general fund balance is estimated to be \$93.9 million.

Following this introduction is a table of contents, 2010-11 general fund condition statement, and a list of the general fund fiscal effects for 2010-11. The document then summarizes each of the items of the Conference Committee report and provides fiscal effects, if any, for 2010-11 and 2011-13.

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## ESTIMATED GENERAL FUND CONDITION STATEMENT

	<u>2010-11</u>
<b>Revenues</b>	
Opening Balance, July 1	\$25,718,100
Taxes	12,691,400,000
Departmental Revenues	
Tribal Gaming	22,330,300
Other	<u>861,624,700</u>
Total Available	\$13,601,073,100
<b>Appropriations</b>	
Gross Appropriations	\$14,101,593,400
Compensation Reserves	95,962,700
Biennial Appropriation Adjustment	-242,677,200
Sum Sufficient Reestimates	-121,637,800
Less Lapses	<u>-391,021,200</u>
Net Appropriations	\$13,442,219,900
<b>Balances</b>	
Gross Balance	\$158,853,200
Less Required Statutory Balance	<u>-65,000,000</u>
Net Balance, June 30	\$93,853,200

## 2010-11 GENERAL FUND FISCAL EFFECTS

	<u>2010-11</u>
<b>REVENUES</b>	
<i>Departmental Revenues (GPR-Earned)</i>	
Increases in Employee Health and Retirement Contributions	\$27,891,400
 <b>APPROPRIATIONS</b>	
Family Care Aging and Disability Resource Centers	-\$3,100,000
Joint Finance Supplemental Appropriation	<u>-4,590,400</u>
Total	-\$7,690,400
 <b>LAPSES OR TRANSFERS</b>	
Increases in Employee Health and Retirement Contributions -- Legislature, Courts, Governor	\$1,908,600
 Effect on General Fund Balance	\$37,490,400

## SUMMARY OF PROVISIONS

### CHILDREN AND FAMILIES

#### 1. EARNED INCOME TAX CREDIT

**Governor/Joint Finance:** Provide \$37,000,000 in 2010-11 in temporary assistance for needy families (TANF) block grant funds for the earned income tax credit (EITC), which would be transferred from the Department of Children and Families (DCF) to the EITC supplement appropriation, and reduce GPR funding for the EITC by a corresponding amount.

The EITC is a refundable tax credit that provides assistance to low-income workers. The credit provides a supplement to the wages and self-employment income of lower-income families and is intended to offset the impact of the taxes paid by such families and increase the incentive to work. The federal TANF regulations allow states to utilize TANF funds for the refundable portion of the state EITC. Approximately 77% of the EITC is refundable. The EITC is currently funded with TANF and GPR. The EITC is estimated to cost \$132.9 million (\$6.7 million FED and \$126.2 million GPR) in 2010-11.

On June 8, 2010, the Department of Administration submitted a request to the Joint Committee on Finance under sections 16.515 and 16.505(2) of the statutes to increase the amount of federal TANF funds used to support the EITC by \$29.0 million annually during the 2009-11 biennium. TANF funding for the EITC would have increased from \$6.7 million to \$35.7 million annually.

Of the requested TANF funds, \$29,000,000 in 2009-10 and \$9,759,300 in 2010-11 was available to be reallocated to the EITC due to underspending in Wisconsin Shares, the state's child care subsidy program. An additional \$19,240,700 in 2010-11 was available under the federal American Recovery and Reinvestment Act (ARRA) of 2009. On June 24, 2010, the Committee approved the use of \$19,240,700 in ARRA funds for the EITC in 2009-10. The Committee placed the remaining \$38,759,300 from underspending in Wisconsin Shares in its federal funds general program supplementation appropriation and required DCF to return to the Committee to request any further expenditure of these funds.

The bill would increase the total amount of TANF funds allocated for the EITC in 2010-11 to \$43,664,200 (an increase of \$37,000,000) and would transfer \$37,000,000 of the funds that had been placed in the Committee's federal funds general program supplemental appropriation to DCF for the EITC. The bill would then transfer these funds from DCF to the EITC supplement appropriation. As a result, although the overall cost of the EITC in 2010-11 is still estimated at \$132.9 million, GPR for the EITC would be \$89.2 million, rather than \$126.2 million.

The most recent estimates of TANF-related programs show a TANF balance of \$76.6

million at the end of 2010-11. With the allocation of an additional \$37.0 million in TANF funds for the EITC, this balance would decrease to \$39.6 million. The TANF balance at the end of the 2011-13 biennium would depend on any changes made during the biennial budget process.

**Conference Committee:** Delete the provisions that would have increased DCF's appropriation by \$37,000,000 and would have transferred these funds to the EITC supplement appropriation.

As a result, the bill would decrease the Committee's federal funds general program supplemental appropriation by \$37,000,000, but these funds would not be transferred to another appropriation. In addition, the bill would increase the statutory TANF allocation for the EITC in 2010-11 by \$37,000,000. However, because the provision that would have increased the EITC supplement appropriation by \$37,000,000 was deleted, there would be no authority to spend these funds for the EITC in 2010-11.

## **2. COLLECTIVE BARGAINING FOR DAY CARE PROVIDERS**

**Governor/Joint Finance/Conference Committee:** Eliminate the authority for a single collective bargaining unit for a certified or licensed day care provider who provides care and supervision for not more than eight children who are not related to the day care provider. For child care providers who are covered by a collective bargaining agreement, this provision would first apply on the date on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.

In addition, eliminate the authority for DCF to enter into a memorandum of understanding with the certified representative of county employees performing services for the child care provider services unit in Milwaukee County to modify hours and conditions of employment. Eliminate the authority for DCF to unilaterally resolve disputes as to hours or conditions of employment for these Milwaukee County employees if good faith efforts to resolve disputes fail.

Provisions of 2009 Act 28 authorized, under Subchapter I (Employment Peace) to Chapter 111 (Employment Relations), a single collective bargaining unit for a certified or licensed day care provider who provides care and supervision for not more than eight children who are not related to the day care provider. A certified or licensed day care provider who provides care and supervision for not more than eight children who are not related to the day care provider was included in the definition of employee under Subchapter I. With respect to such day care providers, employer was defined as the state, counties, and other administrative entities involved in regulation and subsidization of the day care providers. The definitions in Subchapter I of "fair-share agreement," "maintenance of membership agreement," and "referendum" were modified to reflect the inclusion of such day care providers and the labor organization representing them. The bill would eliminate these provisions.

Provisions of Act 28 also provided for the state takeover of the administration of Wisconsin Shares, the state's child care subsidy program, from Milwaukee County. As part of the state takeover, Act 28 detailed the treatment of employees of the new child care provider

services unit in Milwaukee County established to administer Wisconsin Shares. Act 28 specified that DCF was permitted to enter into a memorandum of understanding with the certified representative of Milwaukee County employees performing services for the unit and to unilaterally resolve a dispute as to hours or conditions of employment that remained between DCF and the certified representative if good faith efforts to resolve the dispute failed. The bill would eliminate the authority for DCF to enter into this memorandum of understanding or to unilaterally resolve disputes with Milwaukee County employees regarding hours and conditions of employment.

## GENERAL FUND TAXES

### 1. TECHNICAL CORRECTION TO TAX DEDUCTION FOR NEW HIRES

**Joint Finance/Conference Committee:** 2011 Act 3 created an income and franchise tax deduction and credit for businesses that relocate to Wisconsin from outside the state, and 2011 Act 5 created an income and franchise tax deduction based on the increased number of full-time equivalent (FTE) employees hired by a business in Wisconsin. Act 5 includes a provision under the individual income tax specifying that a claimant of the deduction for new FTE hires may not also claim the credit for relocating to Wisconsin. However, the word "credit" should have been "deduction." This item makes a technical correction to the Act 5 provisions to use the proper wording.

## BUDGET MANAGEMENT

### 1. REDUCE 2007 ACT 20 AUTHORITY FOR DOA TO LAPSE OR TRANSFER MONEYS TO THE GENERAL FUND

**Governor/Joint Finance:** Reduce the 2007 Act 20 lapse or transfer requirement by \$79 million, which currently requires the Secretary of the Department of Administration (DOA) to lapse or transfer \$200 million in the 2009-11 biennium from the unencumbered balances of appropriations of executive branch state agencies, other than sum sufficient and federal appropriations. This required \$200 million lapse and transfer amount was included as a revenue to the general fund (GPR-Earned) in 2010-11 in the January 31, 2011, revenue estimate letter by this office, so the effect of this provision would be to reduce estimated revenues to the general fund by \$79 million in 2010-11.

For the 2009-11 biennium, 2007 Act 20 and 2009 Acts 2 and 28 established lapse or

transfer requirements for the Secretary of DOA totaling \$641.8 million. The administration made approximately \$300 million of lapses or transfers in 2009-10, leaving \$341.8 million remaining to be lapsed or transferred in 2010-11. Staff from DOA indicate that the proposed reduction of \$79 million would reduce the cumulative requirements under 2007 Act 20 and 2009 Acts 2 and 28 to reflect the actual amount of lapses and transfers that DOA believes can be made during the remainder of the current fiscal year.

**Conference Committee:** Delete provision.

<b>BUILDING COMMISSION</b>
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**1. GPR DEBT RESTRUCTURING**

**Governor/Joint Finance:** Provide \$165,000,000 of general obligation refunding bonding for the purpose of restructuring \$165,000,000 in outstanding principal on GPR-supported, general obligation debt that would otherwise be paid off in May, 2011. The bill would authorize this bonding by increasing a current refunding authorization from \$309,000,000 to \$474,000,000 (an increase of \$165,000,000) of state public debt that may be issued to refund any unpaid indebtedness relating to tax-supported or self-amortizing facilities. These bonds cannot be issued after June 30, 2011.

Although this bonding could be used to restructure both tax-supported and self-amortizing bonds, the administration indicates that only GPR-supported bonds would be restructured. Based on information from the administration on the potential structure of these refunding bonds, this provision would: (a) increase GPR-Lapses by \$165,000,000 in 2010-11 from GPR debt service appropriations to reflect the reduced GPR principal payments to be made from those appropriations in that year; and (b) increase anticipated GPR debt service costs in the 2011-13 biennium by \$29,570,000 to reflect the initial principal payment (\$15,560,000) associated with the expected ten-year amortization of the \$165,000,000 in deferred principal and the initial interest payments (\$14,010,000) due on that principal.

**Conference Committee:** Delete provision.

**UNIVERSITY OF WISCONSIN HOSPITAL AND CLINICS AUTHORITY**

**1. REPEAL COLLECTIVE BARGAINING RIGHTS FOR UNIVERSITY OF WISCONSIN HOSPITALS AND CLINICS AUTHORITY EMPLOYEES**

**Governor/Joint Finance/Conference Committee:** Eliminate collective bargaining rights for employees of the University of Wisconsin Hospitals and Clinics Authority. Under current law, three collective bargaining units are established for the representation of employees of the Authority: (1) fiscal and staff services; (2) patient care; and (3) science. The treatment of these provisions would first apply to employees who are covered by a collective bargaining agreement that contains provisions inconsistent with these provisions on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever comes first.

**UNIVERSITY OF WISCONSIN HOSPITAL AND CLINICS BOARD**

**1. ELIMINATE UNIVERSITY OF WISCONSIN HOSPITAL AND CLINICS BOARD**

	<u>2010-11</u>	<u>2011-13</u>
PR	-\$76,872,500	-\$307,479,000
Positions	-2,609.38	-2,609.38

**Governor/Joint Finance/Conference Committee:** Delete statutory language establishing the University of Wisconsin Hospital and Clinics Board (UWHCB) and the requirement that the University of Wisconsin Hospitals and Clinics Authority contract with UWHCB for certain services. Eliminate an existing program revenue (PR) appropriation for the UWHCB with annual base level funding of \$153,739,500 and 2,609.38 positions. Eliminate the two nonvoting members of the Authority's Board of Directors who are appointed by the Governor and who must be an employee or a representative of one of the collective bargaining units representing the employees of the Authority or the Board. Delete provisions related to carry-over employees who were members of collective bargaining units during 1996-97 when the Authority was created.

Terminate the existing contract between the Board and the Authority on the effective date of the bill and transfer all employees of UWHCB to the Authority. Require the Authority to adhere to the terms of any collective bargaining agreement covering the UWHCB employees that is in effect on the bill's effective date, until that agreement terminates, including specifically terms relating to employer payment of any employee required contributions under the Wisconsin Retirement System and employer payment of any health insurance premiums on behalf of employees. Provide that upon termination of the collective bargaining agreement, the Authority

would establish the compensation and benefits of the Board's employees as under current law for other Authority employees.

UWHCB and the Authority were created by 1995 Act 27. The Authority operates and manages the University of Wisconsin Hospitals and Clinics and UWHCB employs the non-professional represented employees that provide services to the Authority. Current law requires the Authority to contract with UWHCB for the provision of certain services and prohibits the Authority from contracting with any other entity for the provision of such services. UWHCB is a state agency and its employees are state employees who are represented in the following collective bargaining units: (a) clerical and related; (b) blue collar and nonbuilding trades; (c) building trades crafts; (d) security and public safety; and (e) technical. UWHCB employees are paid through a PR appropriation with revenues received from the Authority; UWHCB does not receive any state GPR funding.

The Authority is not a state agency and employees of the Authority are not state employees. Current law establishes three collective bargaining units for representation of employees of the Authority: (1) fiscal and staff services; (2) patient care; and (3) science. Collective bargaining units for the representation of employees of the Authority who are not engaged in one of the three activities must be approved by the Employment Relations Commission.

<b>HEALTH SERVICES</b>
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**1. MEDICAL ASSISTANCE -- STUDY AND IMPLEMENTATION OF PROGRAM CHANGES**

**Governor:** Require the Department of Health Services (DHS) to study potential changes to the medical assistance (MA) program, and authorize DHS to promulgate emergency rules, subject to review by the Joint Committee on Finance under a 14-day passive review process, to implement program changes, as described below.

*Study.* Direct DHS to study potential changes to the MA state plan and to waivers of federal law relating to MA obtained from the U.S. Department of Health and Human Services (DHHS) for all of the following purposes: (a) increasing the cost effectiveness and efficiency of care and the care delivery system for MA programs; (b) limiting switching from private health insurance to MA programs; (c) ensuring the long-term viability and sustainability of MA programs; (d) advancing the accuracy and reliability of eligible MA programs and claims determinations and payments; (e) improving the health status of individuals who receive benefits under the MA program; (f) aligning MA program benefit recipient and service provider incentives with health care outcomes; and (g) supporting responsibility and choice of MA recipients.

*Rules.* Provide that if DHS determines, as a result of the study described above, that revision of existing statutes or rules would be necessary to advance a purpose described above, DHS could promulgate rules that do any of the following related to the MA programs: (a) require cost-sharing from recipients up to the maximum allowed by federal law or a waiver of federal law; (b) authorize providers to deny care or services if a program benefit recipient is unable to share costs, to the extent allowed by federal law or waiver; (c) modify existing benefits or establish various benefit packages for different groups of recipients; (d) revise provider reimbursement models for particular services; (e) mandate that program benefit recipients enroll in managed care; (f) restrict or eliminate presumptive eligibility; (g) to the extent permitted by federal law, impose restrictions on providing benefits to individuals who are not citizens of the United States; (h) set standards for establishing and verifying eligibility requirements; (i) develop standards and methodologies to assure accurate eligibility determinations and redetermine continuing eligibility; and (j) reduce income levels for purposes of determining eligibility to the extent allowed by federal law or waiver, subject to other provisions in the bill regarding waiver requests and a potential reduction in the eligibility standard for non-pregnant, non-disabled adults.

Permit DHS to promulgate any rule under this provision as an emergency rule, using the procedures for emergency rules established in Chapter 227. However, provide that DHS is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and that DHS is not required to provide a finding of an emergency for the rule. In addition, provide that an emergency rule promulgated under this provision remains in effect until whichever of the following occurs first: (1) the effective date of the repeal of the emergency rule; or (2) the date on which the permanent rule takes effect.

*Joint Finance Review of Proposed Rules and DHS Plan to Implement Program Changes.* Require DHS to submit to the Joint Committee on Finance any proposed rule described above, and any plan that DHS develops as a result of the study. Provide that if the Co-Chairs of the Committee do not notify DHS within 14 working days after the date of the DHS submittal that the Committee has scheduled a meeting for the purpose of reviewing the proposed rule or plan, the proposed rule may be promulgated and any plan may be implemented as proposed by DHS. However, if, within 14 working days after the date of the DHS submittal the Co-Chairs notify DHS that the Committee has scheduled a meeting for the purpose of reviewing the proposed rule or plan, the proposed rule could be promulgated, and the plan implemented, only upon approval of the Committee.

*Submission of State Plan Amendments and Waiver Requests.* Require DHS to submit an amendment to the state MA plan or request a waiver of federal MA law, if necessary, to the extent necessary to implement any rule promulgated under these provisions. Provide that if DHHS does not allow the amendment or does not grant the waiver, DHS could not put the rule into effect or implement the action described in the rule.

*Waiver of PPACA Eligibility MOE Requirement and Potential Reduction in Financial Eligibility Standard for Non-Disabled, Non-Pregnant Adults.* Require DHS to request a waiver

from the U.S. Department of Health and Human Services (DHHS) Secretary to permit DHS to have in effect eligibility standards, methodologies, and procedures under the state MA plan or waivers of federal laws relating to MA that are more restrictive than those in place on March 23, 2010. Specify that if the waiver request does not receive federal approval before December 31, 2011, DHS would be required to reduce income eligibility standards on July 1, 2012, for non-disabled, non-pregnant adults to 133% of the federal poverty level (FPL), to the extent permitted under provisions enacted as part of the federal Patient Protection and Affordable Care Act (PPACA).

PPACA includes a general requirement that prevents states from having in effect eligibility standards, methodologies, or procedures under their state MA programs that are more restrictive than the eligibility standards, methodologies, or procedures that were in effect on the date PPACA was enacted (March 23, 2010). This maintenance of effort (MOE) requirement took effect on March 23, 2010, and continues until the date on which the DHHS Secretary determines that the state has a fully operational health benefit exchange (which is assumed to be January 1, 2014). The federal MOE requirement, as it relates to children under the age of 19, continues until October 1, 2019.

However, during the period beginning January 1, 2011, through December 31, 2013, PPACA contains an exception to the general MOE requirement for non-pregnant, non-disabled adults with incomes greater than 133% of the FPL if the state certifies to the DHHS Secretary that it has a budget deficit during the fiscal year in which the certification is made, or that it is projected to have a budget deficit in the succeeding state fiscal year.

As of December, 2010, it is estimated that there were approximately 63,200 non-disabled, non-pregnant adults in families with income greater than 133% of the FPL enrolled in BadgerCare Plus, excluding approximately 6,800 adults without dependent children who were enrolled in the Core plan. All of these individuals are in families with income less than 200% of the FPL, which is the maximum family income individuals in these groups may have to be eligible for these programs.

*Scope of Emergency Rules.* For the purposes of these provisions, define an MA program to include any program operated under Subchapter IV of Chapter 49 ("Medical Assistance"), demonstration program operated under 42 USC 1315 ("MA Demonstration Projects"), and a program operated under a waiver of federal law relating to MA that is granted by DHHS.

Based on this definition of a "medical assistance" program, it appears that the emergency rules under these provisions could potentially affect a broad range of MA-related programs, including (but not limited to) the following: (a) BadgerCare Plus and its subprograms, including the BadgerCare Plus Core Plan for childless adults and the family planning waiver program; (b) Medicaid for elderly, blind and disabled populations (EBD Medicaid) and its subprograms, including SSI-related Medicaid, the MA purchase plan, institutional and community-based long-term care programs (including Family Care, the community options waiver programs, and the community integration program), the Katie Beckett program, the Medicare premium assistance programs for individuals who are eligible for both MA and Medicare ("dual eligibles"), and

Wisconsin Well-Woman Medicaid; and (c) SeniorCare.

However, the Legislative Reference Bureau indicates that any such emergency rules could not conflict with current statutory provisions relating to these programs, except those provisions that are referenced in the bill as not applicable if DHS promulgates rules that would conflict with these sections. These sections are listed below.

### **Statutory Provisions Referenced in the Bill that Potentially Could be Superseded by Conflicting Emergency Rules**

<u>Statute</u>	<u>Subject</u>
49.45 (3)	MA payments generally, including (but not limited to) the following: Payments to counties for administrative (income maintenance) services Payments to aging and disability resource centers for conducting functional screens Payments to contracted entities that provide prepaid health care Payments to hospitals, including payments partially funded from hospital assessments Payments for specialized medical vehicle transportation services
49.45 (6m)	Payment to nursing homes, intermediate care facilities for the mentally retarded, and community-based residential facilities, including the state Centers for the Developmentally Disabled and the Wisconsin Veterans Homes
49.45 (8)(b)&(c)	Payment for home health services provided by certified home health agencies and independent nurses
49.45(8r)	Payment for obstetric and gynecological care in primary care shortage areas
49.45(8)(v)	Payments to pharmacies that perform services that result in savings to the MA program
49.45(18)(ac)	Recipient cost sharing (copayments, coinsurance and deductibles)
49.45(18)(ag)	Copayments for generic and brand-name drugs
49.45(18)(b)	Services and individuals who are exempt from cost-sharing requirements, including: Services provided to individuals in skilled nursing homes and certified intermediate care facilities Services provided to persons under 18 years of age in families with income less than 100% of the federal poverty level Services provided to pregnant women Emergency services Family planning services Transportation by common carrier or private motor vehicle, if authorized in advance by a county  Home health services or, if a home health agency is unavailable, nursing services Personal care services Case management services
49.45(18)(d)	A \$12 per month limit on cost-sharing for prescription drugs used by recipients who designate a pharmacy as a sole provider
49.45(23)(a)	Requirement that DHS request a federal waiver to permit DHS to conduct a demonstration project to provide health care coverage for adults under the age of 65 with family incomes up to 200% of the federal poverty level, and who are not otherwise eligible for MA coverage (the

<u>Statute</u>	<u>Subject</u>
	BadgerCare Plus waiver)
49.45(23)(b)	DHS authority to promulgate rules relating to the MA coverage of childless adults under the core plan, including eligibility requirements and cost-sharing requirements (including the annual \$75 enrollment fee)
49.45(24g)(c)	Payments to physicians under the physician payment pilot program created in 2009 Wisconsin Act 28, which authorized increases in payments to qualifying physicians
49.45(24n)(a)&(b)	DHS authority to implement a demonstration project to provide family planning services to women and men between the ages of 15 and 44 whose family income does not exceed 200% of the federal poverty level.
49.45(25g)(c)	Payments to certain qualifying providers that also receive DHS grants for HIV/AIDS-related services
49.45(27)	Prohibition on MA eligibility for non-citizens and aliens lawfully admitted for permanent resident or otherwise permanently residing in the United States under color of law, except as provided under federal law.
49.45(39)(b)1	Payment for school medical services
49.46(1)	MA eligibility -- list of groups eligible for MA
49.46(2)(a)&(b)	MA benefits -- list of services and benefits available to MA recipients
49.465(2)	Presumptive eligibility for pregnant women
49.47(4)(a)	MA eligibility for medically indigent populations
49.47 (6)(a)	MA payments for services provided to individuals eligible for both MA and Medicare (dual eligibles)
49.471 (4) through (8), (10)&(11)	BadgerCare Plus -- general eligibility criteria, presumptive eligibility, miscellaneous eligibility and benefit provisions, special income provisions, provisions relating to health insurance coverage and eligibility, cost-sharing, and benchmark plan benefits and copayments
49.472 (3)&(4)(b)	MA purchase plan -- eligibility and premiums
49.473 (2) & (5)	MA eligibility for women diagnosed with breast or cervical cancer or precancerous conditions, and payments for services

Statutes pertaining to several "medical assistance" programs are not included in the above list. For example, s. 49.688 of the statutes defines the financial eligibility requirements and the cost-sharing requirements for SeniorCare. Similarly, s. 46.286 of the statutes identifies functional and financial eligibility requirements for Family Care, and specifies who is entitled to the Family Care benefit. On its face, the language of the bill may extend to these statutory sections. Under the LRB's interpretation of the bill, however, DHS could not implement emergency rules that conflict with these statutory provisions.

*MA Eligibility Determinations and Reevaluations of Continuing Eligibility.* Authorize DHS to make additional investigations of eligibility at any time determined by the Department under the rules described under this item, to determine eligibility or to reevaluate continuing eligibility. However, specify that if federal law allows a reevaluation of eligibility more frequently than every 12 months and if there is no conflicting provision of state law, DHS would

not be required to promulgate a rule to reevaluate eligibility under this provision.

Under current law, DHS may make additional investigations of eligibility under the following circumstances: (a) when there is reasonable ground for belief that an applicant may not be eligible or that the recipient may have received benefits to which the recipient may not be entitled; or (b) upon the request of the DHHS Secretary.

**Joint Finance:** Specify that all of these provisions would sunset on January 1, 2015.

Under this change, any emergency rules or plans approved by the Joint Committee on Finance, any amendment to the MA state plan, and any waiver agreements DHS enters into as a result of these provisions would terminate on January 1, 2015, if they are inconsistent with the MA statutes that are in effect as of that date. Further, if MA eligibility for non-disabled, non-pregnant adults is reduced to individuals with family income no greater than 133% of the federal poverty level as of July 1, 2012, as provided under the bill, this group would again become eligible for MA as of January 1, 2015, unless the statutes are modified to reflect this reduction in the eligibility standard for this group. It is not clear whether an emergency rule promulgated under the procedures established in the bill would remain in effect after that date.

**Conference Committee:** Modify the bill as follows. First, delete the provision that would direct DHS to submit to the Joint Committee on Finance any proposed rule and any plan that DHS develops as a result of its study for the Committee's review and approval under a 14-day passive review process. Instead, DHS would be required to promulgate rules in order to implement program changes. Second, delete the provision that would authorize DHS to promulgate any such rules as emergency rules. Consequently, DHS would use the current rule-making process to make program changes.

The bill would retain the Joint Finance provision that would sunset all of these provisions on January 1, 2015. After that date, none of the rules promulgated by the Department could potentially conflict with statutory provisions that are effective after that date.

## **2. MEDICAL ASSISTANCE -- BENEFITS FUNDING**

**Governor/Joint Finance:** Increase funding for medical assistance (MA) benefits by \$410,835,500 (\$134,000,000 GPR, \$270,135,500 FED, and \$6,700,000 SEG) in 2010-11 to address a projected shortfall in funding for MA benefits during the 2009-11 biennium. The GPR increase (\$134,000,000) represents additional state funding that would be provided to support MA benefit costs in the 2009-11 biennium. The SEG increase (\$6,700,000) reflects the administration's intention to fully expend the projected uncommitted balance in the MA trust fund as of June 30, 2011. The FED increase (\$270,135,500) represents an estimate of the additional federal matching funds the state would be able to claim, based on the increases in GPR and SEG funding that would be authorized in the bill.

The total GPR increase in the bill (\$134.0 million) is \$19.2 million less than the amount indicated in January would be needed to address the shortfall. Since that time, the administration

has identified several adjustments to the estimated shortfall, reducing the projected need for supplemental funding.

Higher-than-expected enrollment is the primary reason MA benefit costs have exceeded 2009 Act 28 (the 2009-11 budget) funding levels. This is shown in the following table, which compares the enrollment projections used as the basis for the benefits funding provided in Act 28 to actual MA enrollment in 2009-10, and to the Department's most recent enrollment projections for 2010-11, for each major MA eligibility group.

**Average Monthly Enrollment  
by Major MA Eligibility Group**

<u>Group</u>	<u>Fiscal Year</u>	<u>Act 28 Projection</u>	<u>2009-10 Actual and Current 2010-11 Estimate Enrollment</u>	<u>Difference</u>	
				<u>Number</u>	<u>Percentage</u>
Elderly, Blind and Disabled	2009-10	188,500	198,900	10,400	5.5%
	2010-11	187,300	205,800	18,500	9.9
BadgerCare Plus	2009-10	638,100	705,600	67,500	10.6
	2010-11	648,400	745,800	97,400	15.0
BadgerCare Plus Core Plan	2009-10	24,900	56,000	31,100	124.9
	2010-11	39,500	49,200	9,700	24.6
Other	2009-10	77,600	83,800	6,200	8.0
	2010-11	<u>78,500</u>	<u>95,100</u>	<u>16,600</u>	21.1
Total MA	2009-10	929,100	1,044,300	115,200	12.4%
	2010-11	953,700	1,095,900	142,200	14.9%

As indicated, total average monthly enrollment for MA programs exceeded Act 28 projections by 12.4% in 2009-10, and is expected to exceed Act 28 projections by 14.9% in 2010-11. (The table excludes individuals enrolled in SeniorCare.) By contrast, the projected GPR shortfall of \$134.0 million for 2009-11 MA benefit expenditures represents 5.4% of the GPR budgeted for that purpose in Act 28. The principal reason the projected GPR deficit, as stated in percentage terms (5.4%), is smaller than the greater-than-expected enrollment increases (12.4% in 2009-10 and 14.9% in 2010-11) is the additional federal funds the state received during the 2009-11 biennium, compared to what was anticipated in Act 28. Those additional federal dollars came from three sources.

First, in February, 2010, the U.S. Department of Health and Human Services (DHHS) announced that the enhanced federal medical assistance percentages (FMAPs) available to states under the American Recovery and Reinvestment Act of 2009 (ARRA) would apply to states' clawback payments to the federal government. States make those clawback payments to reimburse the federal government for a portion of the savings they realize on prescription drugs costs for dual eligible enrollees following the creation of Medicare Part D. The DHHS decision

to apply ARRA's enhanced FMAs to those clawback liabilities benefited Wisconsin's MA program by approximately \$77 million during the 2009-11 biennium. Second, on August 10, 2010, the President signed P.L. 111-226 into law, which partially extended the ARRA-enhanced FMAs states receive for their MA programs through June 30, 2011. Under ARRA, those enhanced FMAs had originally been set to expire on December 31, 2010. At the time P.L. 111-226 was enacted, DHS estimated that it would generate approximately \$194 million in additional federal MA matching funds for Wisconsin. Third, in December, 2010, the state received a \$23.1 million "bonus payment" from the federal government under the Children's Health Insurance Program Reauthorization Act of 2009 for simplifying MA enrollment and renewal processes.

In addition, the bill would repeal an Act 28 provision that does the following: (a) prevents the unencumbered balance in the GPR-funded MA benefits appropriation from reverting to the general fund at the end of the 2009-11 biennium; and (b) authorizes DHS, in the 2009-11 biennium, to expend the amount equal to this unencumbered balance, in addition to the amounts budgeted in the GPR-funded MA benefits appropriation for state fiscal years 2009-10 and 2010-11.

*SeniorCare.* Not reflected in the bill is the administration's current estimate that SeniorCare will end the 2009-11 biennium with a GPR surplus of approximately \$20.4 million. These funds are anticipated to lapse to the general fund at the end of the 2010-11 fiscal year. This anticipated lapse is reflected in the 2010-11 general fund condition statement.

**Conference Committee:** Delete provision.

### **3. MEDICAL ASSISTANCE BENEFITS FUNDING TO ACCRUE ADDITIONAL FEDERAL MATCHING FUNDS**

**Joint Finance:** Increase medical assistance (MA) benefits funding in the bill by an additional \$42.7 million GPR in 2010-11 to enable DHS to partially fund June, 2011, capitation payments to health maintenance organizations and other entities that provide MA services through managed care in the current fiscal year to take advantage of the higher federal medical assistance percentage (FMAP) that applies to MA benefit payments made through June 30, 2011. Increase estimated FED funding for MA benefits costs by \$82.6 million in 2010-11.

As introduced, the bill would provide \$134 million GPR and \$6.7 million SEG from the MA trust fund in 2010-11 to address a projected shortfall in funding for MA benefits during the 2009-11 biennium. That projected shortfall assumes that DHS, consistent with past practice, will defer certain June, 2011, capitation payments to managed care entities until July, 2011.

Federal matching funds help support the cost of benefits under the state's MA program at a rate based on the state's FMAP. In recent years, Wisconsin's FMAP has been approximately 60.0%, meaning federal matching funds supported 60.0% of most of the program's benefit costs. The American Recovery and Reinvestment Act of 2009, however, temporarily increased states' FMAs during the period October 1, 2008, through December 31, 2010. That period was subsequently extended through June 30, 2011. As a result of that extension, Wisconsin's FMAP

during the final quarter of state fiscal year 2010-11 (April 1, 2011, through June 30, 2011) is expected to be 65.92%. Under current law, that FMAP will revert to 60.16% on July 1, 2011.

With the scheduled decline in the state's FMAP beginning July 1, 2011, deferring June, 2011, capitation payments will result in the state receiving less federal matching funds to support those payments. This provision would increase funding for MA benefits by \$42.7 million GPR in 2010-11 in order to pay a portion of the June, 2011, MA capitation payments that would otherwise be deferred into July, 2011. Doing so would generate approximately \$7.2 million in additional federal matching funds in 2010-11, compared to the federal matching funds that would be generated if the payments were made in July, 2011.

This provision would enable the state to pay \$42.7 million GPR in 2010-11 to make MA capitation payments that would cost \$49.9 million GPR if they are made in July, 2011. If enacted, the administration indicates that the \$49.9 million GPR savings for MA benefits that would be realized in 2011-12 will be included in the Governor's 2011-13 biennial budget bill as a GPR-Lapse from the Department of Health Services in the 2011-13 biennium.

**Conference Committee:** Delete provision.

#### **4. MEDICAL ASSISTANCE -- ADMINISTRATION CONTRACTS**

**Governor/Joint Finance:** Provide \$16,000,000 GPR to fund a projected shortfall for MA administrative contract expenses in the 2009-11 biennium. As most MA administrative costs are supported 50% with federal matching funds, it is estimated that the GPR increase in the bill would result in a corresponding increase in federal funds to support administrative contracts.

DHS is responsible for a variety of administrative duties in connection with the state's Medicaid, BadgerCare Plus, and FoodShare programs. Those responsibilities include eligibility determinations, program integrity, rate-setting, enrollee services, and federal reporting requirements. DHS contracts with other entities to help perform some of those duties. The largest such contracts are with HP Enterprise Services, which acts as the state's fiscal agent, its enrollment broker, and which helps administer the Enrollment Services Center (ESC). DHS also has major contracts with Deloitte and the Department of Administration's Division of Enterprise Technology relating to the client assistance for reemployment and economic support (CARES) system, a mainframe system that assists state and county staff in making eligibility determinations and maintaining case information for several state assistance programs. In addition to these major contracts, DHS contracts for a range of consulting, actuarial, and other administrative services.

Act 28 budgeted \$79,849,100 (\$31,451,700 GPR and \$48,397,400 FED) in 2009-10 and \$78,229,900 (\$32,175,900 GPR and \$46,054,000 FED) in 2010-11 to support MA administrative contract costs. In addition, several sources of program revenue (PR), including the \$60 annual enrollment fees paid by BadgerCare Plus Core Plan participants, are expected to contribute approximately \$5.2 million and \$5.4 million toward these costs in 2009-10 and 2010-11, respectively.

The ESC is the single largest source of the projected cost overruns for MA administrative contracts. The ESC is located in Madison and was established by DHS to perform certain income maintenance activities for the BadgerCare Plus Core Plan. Two factors contributed to the ESC cost overruns during the biennium. The first was the large number of enrollment applications that accompanied the Core Plan's statewide expansion in July, 2009. Act 28 had assumed that the Core Plan's average monthly enrollment would be 24,900 in 2009-10. The program's actual average monthly enrollment that year of 56,000 was more than twice the budgeted assumption. In addition, this greater-than-expected demand for Core Plan services prompted DHS to establish a waitlist which by December, 2010, had grown to approximately 80,000 individuals. DHS added staff to the ESC to process these Core Plan applications, and the resulting personnel costs contributed to the projected cost overruns.

The second factor was the Department's decision to have ESC perform certain income maintenance activities for childless adults throughout the state who applied for FoodShare benefits. Prior to that time, those activities were performed by county income maintenance workers. While the Department's decision reduced the demands on county income maintenance agencies (particularly at a time of sharply rising FoodShare caseloads), it required DHS to further increase ESC staffing levels.

Most of the ESC's costs are personnel-related. According to DHS, the ESC is currently staffed by 333 HP employees and 73 public employees. As of December, 2010, those personnel were responsible for approximately 115,100 active cases, including the following: (a) 47,000 MA-only cases; (b) 26,300 combined MA/FoodShare cases; and (c) 41,800 FoodShare-only cases.

ESC costs exceeded Act 28 funding levels by \$3.2 million GPR in 2009-10, and are projected to exceed budgeted levels by an additional \$12.5 million GPR in 2010-11. Several other items also contributed to the projected GPR shortfall in the administrative contracts appropriation during the 2009-11 biennium, including systems-related costs stemming from the Department's ForwardHealth rate reform project. Act 28 did not provide any funding for those rate reform costs, which totaled approximately \$1.3 million GPR in 2009-10 and \$2.7 million GPR in 2010-11.

DHS addressed part of the 2009-11 GPR shortfall in the administrative contracts appropriation by expending approximately \$10.8 million of the revenues credited to the segregated MA trust fund. The fiscal effect of using those MA trust fund revenues to fund administrative contracts costs instead of MA benefits costs was to increase the projected 2009-11 GPR shortfall for MA benefits by \$10.8 million. That GPR shortfall is addressed in the item entitled "Medical Assistance -- Benefits Funding." The remaining 2009-11 GPR shortfall in the MA administrative contracts appropriation of \$16.0 million is addressed in this item.

**Conference Committee:** Delete provision.

**5. MEDICAL ASSISTANCE -- INCOME MAINTENANCE**

**Governor/Joint Finance:** Increase funding by \$2,500,000 GPR to fund the projected deficit in the DHS income maintenance appropriation in 2010-11. Because these expenditures are typically supported 50% with federal matching funds, it is estimated that the GPR increase in the bill would result in a corresponding increase in federal funds.

Act 28 provided \$31,451,700 GPR in each year of the 2009-11 biennium to support the state share of costs funded by the income maintenance appropriation. Those costs include state support for county income maintenance agencies, the Wisconsin funeral and cemetery aids program, and the FoodShare for qualified aliens program. Funding in the income maintenance appropriation is also used to support the state's share of the costs to operate Milwaukee Enrollment Services (MiES), which is responsible for income maintenance activities in Milwaukee County. DHS has indicated that cost overruns in the funeral and cemetery aids program, the FoodShare for qualified aliens program, and for MiES all contributed to the projected GPR shortfall of \$2,500,000.

**Conference Committee:** Delete provision.

**6. AGING AND DISABILITY RESOURCE CENTERS**

	<u>2010-11</u>
GPR	-\$3,100,000
FED	-1,205,600

**Governor/Joint Finance/Conference Committee:** Reduce funding budgeted for Family Care aging and disability resource centers (ADRCs) by \$3,100,000 GPR in 2010-11 to reflect estimates of cost savings that DHS will realize because several ADRCs began operations in the 2009-11 biennium later than the dates assumed in Act 28. Currently, approximately 28% of the total funding budgeted for ADRCs is supported with federal MA administration funds. Consequently, the GPR funding reduction in the bill would reduce estimated federal funds by approximately \$1,205,600 in 2010-11, compared to the amount budgeted in Act 28.

ADRCs provide information, assessments, functional eligibility determinations, prevention, wellness, and other services relating to long-term care. The funding that was provided in 2009 Act 28 was based on the administration's assumption that ADRCs would begin operating in seven counties during the 2009-11 biennium -- Dane, Langlade, Lincoln, Rock, Walworth, Winnebago, and Milwaukee Counties. ADRCs in four of these counties started operating later than was assumed in Act 28, and two counties, Dane and Rock, will not begin operating ADRCs in the 2009-11 biennium.

**7. WISCONSIN QUALITY HOME CARE AUTHORITY**

**Governor/Joint Finance/Conference Committee:** Repeal all statutory provisions relating

to the Wisconsin Quality Home Care Authority (WQHCA), including provisions that establish a process under which certain independent, qualified home care providers can establish a single statewide collective bargaining unit for the purpose of bargaining collectively with the state with respect to wages and fringe benefits.

In 2010-11, DHS is budgeted \$275,000 GPR and \$225,000 FED to support WQHCA. The bill would not reduce funding in the current fiscal year for WQHCA. However, if this provision were enacted, base funding for WQHCA could be reduced as part of the 2011-13 biennial budget.

*Description of WQHCA.* 2009 Act 28 created the WQHCA as a means for improving the supply and quality of independent home care workers. Individuals who receive services under Family Care, Family Care Partnership, the Program for All-inclusive Care for the Elderly (PACE), Include, Respect, I Self-Direct (IRIS), and some county-administered long-term care programs have the option to self-direct some of the long-term care services they receive, including home care services. Individuals who choose to self-direct their care are responsible for finding and hiring their home care providers.

To facilitate the hiring process, WQHCA is required to maintain a registry of independent home care providers and provide referrals to individuals in need of home care services. The registry includes contact information for the provider and information regarding the provider's experience and qualifications. All registered providers must pass a background check. WQHCA is also required to develop recruitment, retention, and skills training programs for home care providers, as well as a backup provider system with a 24-hour call service.

*Representation for Independent Home Care Providers.* Act 28 created provisions that required DHS to provide a labor organization with the list of independent home care providers maintained by the WQHCA, if the organization met certain specified criteria. The Employment Relations Commission was directed to hold an election in which independent home care providers could vote on whether they wished to be represented. If the majority of home care providers vote for a single labor organization, the labor organization would be the exclusive representative for all home care providers in that collective bargaining unit.

In May, 2010, these independent home care workers voted to make the Service Employees International Union (SEIU) Healthcare Wisconsin their exclusive representative. DHS, representing the state, reached an agreement with SEIU in December, 2010, under which DHS agreed to ensure that home care payers pay providers at least \$9 per hour, effective July 1, 2012. Bills to ratify the agreement negotiated between the state and SEIU Healthcare Wisconsin (2009 Assembly Bill 995 and SB 725) failed to pass the Legislature.

*Transfer of Assets and Contracts.* Transfer all assets, liabilities, personal property (including records), and contracts of the WQHCA to DHS on the effective date of the bill. Specify that all contracts entered into by the WQHCA in effect on the effective date of the bill would remain in effect and be transferred to DHS. Direct DHS to carry out any obligations under such a contract until the contract is modified or rescinded by DHS to the extent allowed under the contract.

## 8. INCOME AUGMENTATION FUNDING LAPSE

**Governor/Joint Finance/Conference Committee:** Require DHS to lapse \$4,500,000 FED and the Department of Children and Families (DCF) to lapse \$2,011,200 PR to the general fund in 2010-11, but require the Secretary of the Department of Administration (DOA) to apply these lapses to the \$200 million lapse requirement for the 2009-11 biennium included in 2007 Act 20. As a result, this provision would not increase anticipated lapses to the general fund in 2010-11. However, it would specify in statute two appropriations from which specific lapse amounts would occur. In addition, it would authorize the lapse of federal revenues to the general fund, which is prohibited under the Act 20 provision.

The source of revenue for these lapses is federal medical assistance matching funds the state claims for targeted case management (TCM) services counties provide to children in out-of-home care whose costs are not reimbursable under Title IV-E of the Social Security Act. TCM funds are a component of income augmentation revenue the state generates by contracting with an agency to conduct activities to maximize federal reimbursement. The state may use these federal funds for any purpose. Under current law, DHS and DCF must submit a plan for the use of these funds to the DOA Secretary by September 1 of the fiscal year after the fiscal year in which the moneys were received. If the DOA Secretary approves the plan, it is then subject to approval by the Joint Committee on Finance under a 14-day passive review.

The bill would require DCF and DHS to lapse a total of \$6,511,200 of these funds in state fiscal year 2010-11, rather than wait for the September 1, 2011, plan to allocate these funds. Any remaining income augmentation revenue the state collects in 2010-11 would be allocated under the September, 2011, plan, the 2011-13 biennial budget, or other legislation that specifically allocates these funds.

### ADMINISTRATION

## 1. SALE AND CONTRACTUAL OPERATION OF STATE-OWNED POWER PLANTS

**Governor:** Allow the Department of Administration (DOA) to sell any state-owned heating, cooling, or power plant or contract with private entities for the operation of any such plant, with or without solicitation of bids, for any amount the Department determines to be in the best interest of the state.

Under current law, through June 30, 2011, DOA may sell state-owned property, if the Department determines that it is in the best interest of the state. The sale may be conducted using public bids, or negotiated prices. The Department may reject bids if they do not serve the state's interest. Such sales must be approved by the Building Commission. After June 30, 2011, such property would have to be declared surplus (property not needed for agency operations) in order

to be sold by the state. In addition, the University of Wisconsin System Board may sell or dispose of property as allowed under statute and as is deemed beneficial to the System and the state. The bill would exempt the sale of state-owned heating, cooling and power plants from these current law requirements. Specify that DOA may attach conditions to the sale or contractual services agreement as it finds in the best interest of the state.

Specify that any outstanding public debt, including principal, interest, and premiums related to refunding of the debt associated with a state-owned heating, cooling or power plant would be paid from the net proceeds of any sale of the property. Specify that property acquired, constructed, or improved using federal financial assistance would be repaid to the federal government through any net proceeds, if required under federal law. If there are any net proceeds after debt service, and repayments to the federal government have been completed, specify that remaining funds be deposited into the budget stabilization fund, unless the sale of property comes from the sale of property or assets at the Northern Center for the Developmentally Disabled, in which case the proceeds would be used for the current law purpose of deposits into the Department of Health Services institutional operations appropriation.

Specify that public utilities would not have to seek Public Service Commission (PSC) approval in order to buy or contract for the operation of a state-owned heating, cooling or power plant. Under current law, the PSC must approve and certify construction, renovation, improvement, expansion, sale, lease, and consolidation of electric generating facilities for public utilities. Public utilities are currently defined as an entity that provides heat, light, water, or power directly or indirectly to the public.

Specify that DOA would only be responsible for state power plants if they are owned and operated by the state. Under current law DOA must operate, maintain, and keep in repair certain state facilities, including the Capitol heating plant, and other power plants that are operated in conjuncture with state facilities.

If DOA sells or enters a contract for the operation of a state-owned heating, cooling, or power plant, unless otherwise agreed between DOA and the operator, specify that the purchaser or contractor would continue to operate the plant, keep it in good repair, and continue to provide adequate and sufficient heating, cooling and/or power to meet the state's current and future needs. Specify that the contract would also have to require the purchaser to submit to the jurisdiction of PSC, if the Commission determines that the purchaser or contractor qualifies as a public utility. If it is determined that the purchaser or operator is not a public utility because it is not providing service directly or indirectly to the public, specify that PSC would regulate the facility as a public utility, if, upon the petition of DOA, PSC determines that it is in the interest of the public.

Require the DOA Secretary to require agencies to submit expenditure estimates for any appropriation related to the operation of a state-owned heating, cooling or power plant during a biennium in which a plant is sold that provides services to that agency. The DOA Secretary would be required to deny estimates for the operation of the facility if the plant will be operated by a private entity. The Secretary could then allow the agency to expend these funds for payments of contractual services for heating, cooling and power. Specify that if the DOA Secretary determines that less funds would be needed to pay for heating, cooling, or power under a contract with

a private entity, the Secretary may lapse or transfer from GPR or PR sum certain appropriations the estimated excess into the general fund, effective on the date in which the facility is no longer operated by the state.

Specify that, if a state-owned heating, cooling, or power plant is sold or a contract is agreed to for the operation of the facility, then the DOA Secretary could identify and delete any full-time equivalent positions authorized for the operation of the facility. The reduction of state positions would be effective on the date in which the facility is no longer operated by the state.

Specify that the DOA Secretary would have to notify the Co-chairpersons of the Joint Committee on Finance of any action taken to sell these facilities, delete agency position authority, payment of debt service, deposit funds into the budget stabilization fund, transfer or lapse appropriated amounts for the operation of plants into the general fund, or reallocate resources within appropriations for contracted services relating to purchasing contracted services.

The provision does not require the sale of state-owned heating, cooling or power plants, nor does it specify profit margins in the event of a sale. It is, therefore, unknown what amounts, if any, would be deposited into the budget stabilization fund from net proceeds or into the general fund from lapses and transfers from operating budgets.

The Department of Administration identifies 37 heating, cooling and power plants, including 14 at University of Wisconsin institutions, 13 at Department of Corrections facilities, five at Department of Health Services facilities and five at other agency facilities.

Since most of the heating, cooling, and power plants are tied into specific state facilities, it is likely that any purchase or lease would be agreed to only if there was an additional agreement requiring the state to purchase heating, cooling, and power from the purchaser or leaser. The long-term value of any sale, from the state's perspective, will hinge on any contractors ability to provide heating, cooling and power for less than it would cost to produce the same commodities on its own. The value from the perspective of any buyer or leaser would be based on that company's ability to recover more net profits (including sales price, production costs, and taxes and tax incentives) from the purchase or lease than in the absence of such a purchase or lease.

**Joint Finance:** Specify that the Department of Administration (DOA) could not sell, enter a lease, or contract for any of the operations of a state-owned heating, cooling or power plant unless such a transaction was approved by the Joint Committee on Finance under a 14-day passive review process. Require the Department of Administration to submit the following to the Committee as part of any request: (a) estimated value of the facility as determined by DOA and at least one qualified privately-owned assessor; (b) full cost of retiring remaining debt for the facility; (c) a cost benefit analysis that considers the short-term and long-term costs and benefits to the state for selling, leasing, or entering a contract for facility operations; (d) the length and conditions of any proposed sale, lease or service agreement between the state and a proposed purchaser; (e) the estimated budgetary impact for affected state agencies for at least the current and following biennium; and (f) any other information requested by the Committee.

Authorize the Building Commission to determine and make payments to the federal government so as to avoid an adverse effect on any exclusion of interest from gross income for

federal income tax purposes on public debt, revenue obligations, appropriation obligations, operating notes, and master lease obligations and to make payments to advisors that assist in making the determination. This provision would allow the state to make payments to federal Internal Revenue Service (IRS) so as to retain the tax exempt status of bonds issued to finance a power plant or facility in the event that plant or facility is subsequently sold to a private entity for which that tax exempt status would not apply. Under current law, the Building Commission has the authority to only make payments to federal government so that public debt, revenue obligations, and operating notes are not treated as arbitrage bonds. The payment provisions under the amendment are broad enough to continue to allow these payments to be made. The amendment would also modify the existing program revenue appropriation from which current law payments can be made to incorporate the payments allowed under the amendment.

Modify the portions of the bill relating to the payment of any debts owed on the heating, cooling and power plants in the event of a sale, lease, or contract for service to specify that debt service shall be repaid for the portion of a building project that was related to the construction of the heating, cooling, or power plant.

Require DOA to determine any actions that may be necessary or appropriate as to avoid an adverse effect on any exclusion of interest on such public debt from gross income for federal income tax purposes should a plant be sold, leased or where there would be a contractual services agreement. This may include payments to advisors or the IRS. Net proceeds from the sale of a plant would be in the following order, based on sufficiency of funds: (a) payments to advisors or the IRS determined by DOA to be necessary and appropriate; (b) the repayment of any federal funds used to acquire, construct, or improve the plant, that are required under federal law; (c) to deposit sufficient amounts in the bond security and redemption fund to repay the principal and the interest on any portion of the total debt used to construct the plant; and (d) budget stabilization fund.

**Conference Committee:** Delete provisions specifically relating to the sale or lease of power plants. Retain sections that would authorize the Building Commission to determine and make payments to the federal government so as to avoid an adverse effect on any exclusion of interest from the gross income for federal income tax purposes on public debt, revenue obligations, appropriation obligations, operating notes, and master lease obligations and make payments to advisors that assist in making the determination. This provision would allow the state to make payments to the IRS so as to retain the tax exempt status of the bonds issued to finance a state facility in the event such a facility is subsequently sold to a private entity for which that tax exempt status would not apply. Under current law, the Building Commission has the authority to only make payments to the federal government so that public debt revenue obligations and operating notes are not treated as arbitrage bonds. The payment provisions would continue to allow these payments to be made.

<b>CORRECTIONS</b>
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**1. DEPARTMENT OF CORRECTIONS SHORTFALL - ADULT GENERAL PROGRAM OPERATIONS AND COMMUNITY CORRECTIONS**

**Governor/Joint Finance:** Provide \$19,537,900 to the Department of Corrections to address a shortfall in the Department of Corrections' adult general program appropriation and its community corrections services appropriation. The Department has identified a total shortfall of \$30,082,600 GPR, including \$27,944,200 in the adult general program appropriation and \$2,138,400 in the community corrections services appropriation. According to Corrections, the shortfall is associated with insufficient funding to address: (a) the 2% raise provided for represented staff in 2009; (b) fringe benefit expenditures, which are higher than the anticipated supplement amount; (c) non-salary institutional costs, including health care services and inmate supplies; and (d) increased LTE costs related to providing mental health services.

In order to address the total deficit (\$30,082,600), the budget adjustment bill would provide increased funding of \$19.5 million and transfer \$10.5 million from other appropriations with identified surpluses. The table below identifies the appropriation changes as a result of the bill.

	<u>2010-11</u>
Adult General Program Operations	\$27,944,200
Services for Community Corrections	2,138,400
Energy Costs	-5,362,500
Contract Bed Funding	-2,825,300
Pharmacological Treatment for Child Sex Offenders	-10,700
Earned Release Review Commission	-100,200
Serious Juvenile Offender Program	-2,209,400
Juvenile General Program Operations	-36,600
Total Change to Base Funding	\$19,537,900

Of the amount transferred from the energy costs appropriation (\$5,362,500), \$2,000,000 had previously been estimated as a lapse to the general fund. As a result, the GPR lapse estimate is reduced by \$2,000,000 in 2010-11.

**Conference Committee:** Delete provision.

**LEGISLATURE**

**1. JOINT COMMITTEE ON FINANCE SUPPLEMENTAL APPROPRIATION**

	<u>2010-11</u>
GPR	- \$4,590,400

**Governor/Joint Finance/Conference Committee:** Reduce funding by \$4,590,400 GPR in 2010-11 in the Joint Committee on Finance's general program revenue supplementation appropriation. Under 2009 Act 100, \$8.8 million was placed in the Joint Committee on Finance's supplemental appropriation for potential release to various state agencies and the courts for costs associated with operating while intoxicated legislation. On March 16, 2010, \$4,209,600 GPR was released to the Departments of Corrections and Justice, the District Attorneys, the State Public Defender, and the circuit courts. The reduction under the bill would eliminate the remaining reserve for 2009 Act 100.

**STATE CIVIL SERVICE SYSTEM**

**1. REPLACEMENT OF CLASSIFIED POSITIONS WITH UNCLASSIFIED POSITIONS**

	<u>2010-11</u>	<u>2011-13</u>
All Funds	1.0	1.0

**Governor:**

*Maximum Division Administration Allocation.* Increase the number of current statutorily-authorized division administrators that may be appointed from the unclassified service, for the agencies listed below, by 35 and redefine "administrators" to include other managerial positions determined by an appointing authority.

<u>Agency</u>	<u>Current</u>	<u>Proposed</u>	<u>Modification</u>
Administration*	12	13	1
Agriculture, Trade and Consumer Protection	6	9	3
Children and families	5	8	3
Corrections	4	7	3
Financial Institutions	3	5	2
Health Services	6	9	3
Natural Resources	7	10	3
Office of the Commissioner of Insurance	0	2	2
Office of State Employment Relations*	2	3	1
Public Service Commission	5	8	3
Regulation and Licensing	4	6	2
Revenue	4	7	3
Tourism	0	1	1
Transportation	6	9	3
Workforce Development	<u>6</u>	<u>8</u>	<u>2</u>
Total	70	105	35

\* Under current law, OSER is administratively attached to DOA, and its division administrator allotment is included under DOA.

Under current law, two unclassified positions for the Office of State Employment Relations (OSER) are included under the Department of Administration's (DOA's) division administrator maximum. The bill would increase the maximum for OSER to three administrators. Further, of DOA's 12 allowable division administrator positions, the Department currently only utilizes 10. Under the bill, the two unutilized division administrator allocations are eliminated and three new unclassified positions are created, resulting in a net increase of one division administrator.

In addition, create 1.0 PR additional unclassified position within the DOA. The State Budget Office indicates that this position would act as a division administrator for facilities management, allowing the agency to split the current Division of State Facilities into two divisions: (a) Buildings and Police Services, which would include space rental, state power plant operations, and state building operations maintenance; and (b) Facilities Development, which would include architectural and engineering services and other duties related to capital improvements and Building Commission activities. The provision does not identify any new funding for salary, fringe benefits or supplies and services for this new position, and the State Budget Office indicates that existing funding would be used in 2010-11. [It should be noted that once salary and fringe benefits are assigned to the new position, that amount would be included under standard budget adjustments for future years. The average salary and fringe benefits of current DOA division administrators is \$143,100 annually.]

Finally, allow the Director of OSER to appoint either a deputy director or an executive assistant from outside the classified service. Under current law, the Director of OSER may appoint an executive assistant outside of the classified service (unclassified). The pay scales for executive assistants are set at two ranges below that of the agency head, while the pay scale of

deputies are one below that of the agency head. The current pay scale for an executive assistant at OSER is between \$107,300 and \$166,400 annually for salary and fringe benefits. The pay scale for a deputy at OSER would be between \$115,900 and \$179,800 annually for salary and fringe benefits.

*Classified to Unclassified Position Replacement.* Specify the Secretary of the Department of Administration would identify 36.0 (all funds) classified positions for deletion within specified appropriations and create 37.0 unclassified division administrator positions within specified appropriations, as identified below:

<u>Fund</u>	<u>Appropriation</u>	<u>Agency</u>	<u>Classified Deletions</u>	<u>Unclassified Additions</u>	<u>Change</u>
GPR	Program Operations	Agriculture, Trade and Consumer Protection	-3.00	3.00	0.00
GPR	Program Operations	Children and Families	-1.85	1.85	0.00
GPR	Program Operations	Corrections	-3.00	3.00	0.00
GPR	Program Operations	Health Services	-2.00	2.00	0.00
GPR	Program Operations	Revenue	-2.55	2.55	0.00
GPR	Program Operations	Tourism	<u>-1.00</u>	<u>1.00</u>	<u>0.00</u>
	GPR Total		-13.40	13.40	0.00
FED	Indirect Cost Reimbursements	Administration	-1.00	0.00	-1.00
FED	Federal Projects	Children and Families	-0.15	0.15	0.00
FED	Indirect Cost Reimbursements	Health Services	<u>-1.00</u>	<u>1.00</u>	<u>0.00</u>
	FED Total		-2.15	1.15	-1.00
PR	Materials and Services to State Agencies	Administration	0.00	1.00	1.00
PR	Facility Operations and Maintenance	Administration	0.00	1.00	1.00
PR	Legal Services	Administration	-1.00	1.00	0.00
PR	Administrative and Support Services	Children and Families	-1.00	1.00	0.00
PR	Program Operations	Financial Institutions	-2.00	2.00	0.00
PR	Program Operations	Office of the Commissioner of Insurance	-2.00	2.00	0.00
PR	Program Operations	Office of State Employment Relations	-1.00	1.00	0.00
PR	Program Operations	Public Service Commission	-3.00	3.00	0.00
PR	Program Operations	Regulation and Licensing	-2.00	2.00	0.00
PR	Administrative Services	Workforce Development	<u>-2.00</u>	<u>2.00</u>	<u>0.00</u>
	PR Total		-14.00	16.00	2.00
SEG	Program Operations - Land	Natural Resources	-1.00	1.00	0.00
SEG	Program Operations - Administrative and Technology	Natural Resources	-2.00	2.00	0.00
SEG	Program Operations	Revenue	-0.45	0.45	0.00
SEG	Management and Operations	Transportation	<u>-3.00</u>	<u>3.00</u>	<u>0.00</u>
	SEG Total		-6.45	6.45	0.00
	All Funds Total		-36.00	37.00	1.00

The State Budget Office indicates that personnel from three separate employment areas would be moved from classified to unclassified service under the agencies identified, including: (a) 14.0 (all funds) attorney services positions; (b) 14.0 (all funds) communications positions; and (c) 8.0 (all funds) legislative liaison positions. The revised unclassified positions would be

renamed as chief legal advisors, communications directors, and legislative advisors. Individuals in these unclassified positions would be at will employees appointed by the heads of the respective agencies. The State Budget Office does not anticipate any salary and fringe benefits changes related to this reclassification. However, to the extent that the new unclassified positions are hired at a higher, or lower, salary level than the deleted classified positions, there would be a fiscal effect.

**Joint Finance/Conference Committee:** Modify provision to specify that 2.0 classified positions under the Department of Justice would move from classified to unclassified service (1.0 position under s. 20.455(1)(a) legal services general program operations, and 1.0 position under s. 20.455(3)(a) administrative services general program operations). Specify that the Department of Justice may have five rather than the currently authorized three unclassified division administrator positions. The Department of Administration indicates that there would be one communications and one legislative liaison position moved into unclassified service.

## **2. TRANSFER OF CAREER EXECUTIVE EMPLOYEES**

**Governor/Joint Finance/Conference Committee:** Provide that an appointing authority may reassign an employee in a career executive position to a career executive position in any agency if the appointing authority in the agency to which the employee is to be reassigned approves of the reassignment.

Under current law, the Director of the Office of State Employment Relations (OSER) may promulgate rules to establish a career executive program. The program is intended to provide state agencies with highly qualified executive candidates, provide outstanding administrative employees a broad opportunity for career advancement, and provide for the mobility of such employees among state agencies for the most advantageous use of their managerial and administrative skills. Under current administrative rules, an appointing authority may reassign a career executive employee from one career executive position to another career executive position within the same state agency. The bill would permit an appointing authority to reassign an employee in a career executive position to a career executive position in any state agency if the appointing authority in the state agency to which the employee is to be reassigned approves of the reassignment.

## **3. DISCHARGE OF STATE EMPLOYEES**

**Governor/Joint Finance/Conference Committee:** Provide that, during a state of emergency declared by the Governor under state emergency management law, an appointing authority may discharge any employee who does any of the following: (a) fails to report to work as scheduled for any three working days during the state of emergency and the employee's absences from work are not approved leaves of absence; or (b) participates in a strike, work stoppage, sit-down, stay-in, slowdown, or other concerted activities to interrupt the operations or services of state government, including specifically participation in purported mass resignations or sick calls. Provide that engaging in any of these actions constitutes just cause for discharge.

Before discharging an employee, the appointing authority would be required to provide the employee notice of the action and must furnish to the employee in writing the reasons for the action. The appointing authority would also be required to provide the employee an opportunity to respond to the reasons for the discharge.

Under current law, the Governor may issue an executive order declaring a state of emergency for the state or any portion of the state if he or she determines that an emergency resulting from a disaster or the imminent threat of a disaster exists. Generally, a disaster is a severe or prolonged, natural or human-caused, occurrence that threatens or negatively impacts life, health, property, infrastructure, the environment, the security of this state or a portion of this state, or its critical systems. A state of emergency may not exceed 60 days, unless the state of emergency is extended by joint resolution of the Legislature.

<p style="text-align: center;"><b>WISCONSIN RETIREMENT SYSTEM AND PUBLIC SECTOR HEALTH INSURANCE BENEFITS</b></p>
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**1. REQUIRED RETIREMENT CONTRIBUTIONS AND ADDITIONAL RETIREMENT-RELATED LIMITATIONS APPLICABLE TO LOCAL UNITS OF GOVERNMENT**

**Governor:** Under current law, employee and employer WRS contributions are deposited in the public employee trust fund for investment. There are three components to the WRS contributions: (a) participant (active employee) normal contributions; (b) employer normal contributions; and (c) benefit adjustment contributions (BAC). The benefit adjustment contributions were instituted under 1983 Wisconsin Act 141 to fund increases in retirement benefits of that act. The contribution rates for these components, expressed as a percentage of earnings, also vary by the participant's employment classification. These classifications are: (a) general employees; (b) elected officials and state executives; (c) protective occupation employees who receive social security coverage; and (d) protective occupation employees without social security, which includes only fire fighters employed by local governments.

The following table shows the WRS contribution rates for 2011 by contribution component and the participant's employment classification.

## Wisconsin Retirement System Required Contributions -- 2011

	<u>General Participants</u>	<u>Executives and Elected Officials</u>	<u>Protective Occupation With Social Security</u>	<u>Protective Occupation Without Social Security</u>
Employer Normal Cost	5.1%	9.4%	8.9%	12.2%
Benefit Adjustment Contribution	1.5	0.0	0.0	0.0
Employee Normal Cost	<u>5.0</u>	<u>3.9</u>	<u>5.8</u>	<u>4.8</u>
Total Normal Cost	11.6%	13.3%	14.7%	17.0%

The statutes authorize, but do not require, WRS employers to pay, on behalf of the employee, all or a part of any employee-required contributions. Over time, public employee groups have negotiated, or have been provided, an employer "pickup" of employee-required contributions. Currently, under the state's compensation plan for nonrepresented employees and the pickup provisions under the collective bargaining agreements with represented state employees, the state payment for the employee-required normal retirement contributions equals 5% of earnings. Under these provisions, the employee would be required to pay any required contribution amount above 5%. Therefore, state protective occupation employees, with an employee-required normal contribution rate of 5.8%, must pay the 0.8% of earnings that is not paid by the state.

In addition, as shown in the table, a benefit adjustment contribution is currently applied to general employees only. In 2011, the BAC rate is 1.5% of gross salary. For state employees subject to the BAC, the state will pay up to 1.3% of earnings. Therefore, general employees are required to contribute 0.2% of earnings to the WRS in 2011.

The bill would repeal the current law authority for WRS employers (both the state and local employers), except in certain cases, to pay all or part of the contributions required of participating employees. Prohibit such contributions unless they are required in a collective bargaining agreement with represented local police, local firefighters, state troopers, or state inspectors.

Provide that a WRS general participant, and an executive or elected official participant would be required to make an employee contribution to the WRS in an amount equal to one-half of all actuarially-required contributions, as approved by the Employee Trust Fund (ETF) Board. [Under the current 2011 rates, one-half of the general participant rate would be 5.8% and one-half the executive/elected official rate would be 6.65%.] Require WRS participants who are protective occupation employees (both those who are and are not covered by social security) to contribute the percentage of earnings that would be paid by general participants (5.8% in 2011).

Provide that, notwithstanding the employer and employee required contributions rates established under law for 2011 by the ETF Board, beginning on the first day of the first pay period after March 13, 2011, the employee required contributions, as provided under the bill, would be in effect for the remainder of 2011, and the employer required contributions would be

adjusted to reflect the increases in employee required contributions for the remainder of 2011. Provide that, beginning on the first day of the first pay period after March 13, 2011, for the purpose of calculating employee required contributions, the benefit adjustment contribution would be treated as an employer required contribution for the remainder of 2011. Provide that, if an employer is unable to modify payroll procedures in sufficient time to collect the increased employee-required contributions before the first day of the first pay period after March 13, 2011, the employer must recover all amounts that employees owe before July 1, 2011.

Repeal the benefit adjustment contribution component of the WRS contribution rate. Repeal the current law authority of the ETF Board, on the advice of the actuary, to modify the components of the contribution rate to reflect overall increases or decreases in the rate over time. [Under current law, ETF and its consulting actuary approve the overall contribution rates for the WRS. Additional statutory provisions specify how increases or decreases in the rates each year are to be allocated to the employer and employee components of the rates. These latter adjustment provisions would be deleted from law under the bill, but ETF would retain its authority to modify overall contribution rates each year.]

Provide that, beginning on the effective date of these provisions, in the retirement systems operated by the City of Milwaukee and Milwaukee County, except as otherwise provided in a collective bargaining agreement entered into with represented local police and firefighters, employees would be required to pay one-half of all actuarially required contributions for funding benefits under the retirement system. The employer (the City or the County) would not be allowed to pay, on behalf of an employee, any of the employee's share of the actuarially required contributions.

Provide that a local governmental unit (a political subdivision of the state, a special purpose district, an agency or corporation of a political subdivision or special purpose district, or a combination or subunit of any of the foregoing) may not establish a defined benefit pension plan for its employees unless the plan requires the employees to pay half of all actuarially required contributions for funding benefits under the plan and prohibits the local governmental unit from paying on behalf of an employee any of the employee's share of the actuarially required contributions.

The treatment of these provisions would first apply to employees who are covered by a collective bargaining agreement that contains provisions inconsistent with those sections on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.

**Joint Finance/Conference Committee:** Modify a provision relating to employee contributions under the City of Milwaukee Retirement System from a requirement to contribute half of all actuarially required contributions to a requirement that all employee-required contributions be made by these employees. The modification would delete the words "half of all actuarially required" and substitute the words "all employee required" to utilize terminology more consistent with the provisions of City of Milwaukee Retirement System.

Delete the provision that, beginning on the first day of the first pay period after March 13,

2011, for the purpose of calculating employee required contributions, the benefit adjustment contribution would be treated as an employer required contribution for the remainder of 2011.

**2. HEALTH INSURANCE PREMIUM CONTRIBUTIONS FOR STATE EMPLOYEES AND LOCAL EMPLOYEES PARTICIPATING IN GROUP INSURANCE BOARD COVERAGE**

**Governor/Joint Finance/Conference Committee:** Repeal current law requirements related to the amount that the employer (state) must pay for health insurance for its insured employees. Provide instead that, except as otherwise provided in a collective bargaining agreement with represented local police, local firefighters, state troopers, or state inspectors, the employer must pay for its current insured employees, as follows: (a) for eligible employees who are not part-time employees or university teaching and graduate assistants as described below, an amount not more than 88 percent of the average premium cost of plans offered in the tier with the lowest employee premium cost (tier-1 plan), as established annually by the director of the Office of State Employment Relations (OSER); and (b) for insured part-time employees (other than university teaching and graduate assistants) who are appointed to work less than 1,566 hours per year, an amount determined annually by the OSER Director. For university teaching and graduate assistants, provide that annually, the OSER Director must establish the amount that the employer is required to pay for teaching and graduate assistant health care coverage.

Under nonstatutory provisions, modify state employee health insurance premium contributions in 2011, to provide that, notwithstanding the provisions described above, beginning with health insurance premiums paid in April, 2011, and ending with coverage for December, 2011, employee contributions would be required at the rates shown in the following table. The proposed rates are compared to the rates currently in effect for 2011 for nonrepresented state employees.

**Proposed State Employee Monthly Contribution Rates  
2011**

	<u>Current Law</u>		<u>Bill</u>		<u>Change to Current Law</u>	
	<u>Single</u>	<u>Family</u>	<u>Single</u>	<u>Family</u>	<u>Single</u>	<u>Family</u>
Tier 1	\$36	\$89	\$84	\$208	\$48	\$119
Tier 2	79	198	122	307	43	109
Tier 3	188	471	226	567	38	96

Provide that covered part-time employees described in (b) above, as well as craft and related nonrepresented employees, would be required to pay the same amounts that they are required to pay on the day before the effective date of these provisions. For eligible university teaching and graduate assistants, provide that 50% of the amounts required for employees described in (a) above would be required as contributions in 2011.

If an employer is unable to modify payroll procedures in sufficient time to collect employees' increased share of the premium costs for health care coverage, as specified in these provisions, the employer would be required to recover all amounts that employees owe for the increased share of premium costs before July 1, 2011.

For local government employers that participate in a health insurance plan offered by the Group Insurance Board (GIB), provide that beginning on January 1, 2012, except as otherwise provided in a collective bargaining agreement with local police or firefighters, an employer may not offer the GIB health care coverage plan to its employees if the employer pays more than 88 percent of the average premium cost of plans offered in any tier with the lowest employee premium cost (tier-1 plan).

The treatment of these provisions would first apply to employees who are covered by a collective bargaining agreement that contains provisions inconsistent with these provisions on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.

Under current law, state employees and employees of public authorities created by the state, receive health care coverage under plans offered by the Group Insurance Board (GIB). These plans are assigned to one of three tiers depending on the employee's premium costs. The employer share of premium costs for employees who work more than 1,565 hours a year is an amount not less than 80 percent of the average premium costs under the various health care coverage plans. For employees working less than 1,566 hours per year, the employee contribution must be 50% of the contribution for a full-time employee. Under the compensation plan for nonrepresented state employees and the collective bargaining agreements with represented employees, the employer pays the difference between the total premium cost and the employee share of contributions (which are shown in the table above under current law). The GIB also makes available a health insurance coverage program for local governments to utilize, if they choose to do so.

**3. GENERAL FUND LAPSES IN 2010-11 RELATING TO EMPLOYER SAVINGS IN FRINGE BENEFIT COSTS**

	<u>2010-11</u>	<u>2011-13</u>
GPR-Earned	\$27,891,400	
GPR-Lapse	\$1,908,600	
GPR-Lapse/Transfer		\$275,600,000

**Governor/Joint Finance/Conference Committee:** Transfer or lapse a total of \$29,800,000 to the general fund to reflect projected savings resulting from increases in the portion of premiums that state employees must pay for health insurance and increases in the retirement contributions that state employees must pay. Specific lapse requirements would be as follows:

Require that, before July 1, 2011, the Secretary of DOA to lapse to the general fund, from the unencumbered balances of general purpose revenue and program revenue appropriations to executive-branch state agencies, other than sum sufficient appropriations and appropriations of federal revenues, an amount equal to \$27,891,400. The Secretary would not be allowed to lapse any amount from program revenue appropriations under the University of Wisconsin System, from segregated revenues or from federal appropriations. Provide that the DOA Secretary may not lapse moneys if the lapse would violate a condition imposed by the federal government on the expenditure of the moneys or if the lapse would violate the federal or state constitution. Provide that the amount lapsed must be in addition to the amounts that are required to be lapsed or transferred to the general fund under 2009 Wisconsin Act 28.

Require that, before July 1, 2011, the Co-chairpersons of the Joint Committee on Legislative Organization to take actions to ensure that from general purpose revenue appropriations to the Legislature, an amount equal to \$717,700 is lapsed from sum certain appropriation accounts or is subtracted from the expenditure estimates for any other type of appropriations, or both. Provide that the amount lapsed must be in addition to the amounts that are required to be lapsed or transferred to the general fund under 2009 Wisconsin Act 28.

Require that, before July 1, 2011, the Chief Justice of the Supreme Court take actions to ensure that, from general purpose revenue appropriations to the judicial branch of government, an amount equal to \$1,153,400 is lapsed from sum certain appropriation accounts or is subtracted from the expenditure estimates for any other type of appropriations, or both.

Require that, before July 1, 2011, the Governor take actions to ensure that from general purpose revenue appropriations to the Office of the Governor an amount equal to \$37,500 is lapsed from sum certain appropriation accounts or is subtracted from the expenditure estimates for any other type of appropriations, or both.

On an annualized basis, the Department of Administration estimates that the WRS and health insurance modifications under the bill could result in a cost reduction for the state of \$228.1 million. Of that total, it is estimated that \$137.8 million annually could be lapsed or transferred to the general fund.

#### **4. ELIMINATION OF RETIREMENT AND HEALTH CARE COVERAGE BENEFITS FOR LIMITED-TERM EMPLOYEES**

**Governor:** Prohibit state employees who have limited-term appointments from participating in the Wisconsin Retirement System (WRS) and prohibit these employees from receiving health insurance coverage under the state employee plan offered by the Group Insurance Board (GIB).

Under current law, a state employee becomes a participant in the WRS if they are expected to work at least one-third of what is considered full-time employment by ETF, as determined by rule (currently 600 hours per year), and have an expected duration of employment of one year or more. If a state employee becomes a participating employee in the WRS, the employee is also

eligible for health insurance coverage under a program administered by the GIB. These eligibility provisions apply to limited-term employees. Limited-term appointments in the state civil service are provisional appointments or appointments for less than 1,044 hours per year.

**Joint Finance/Conference Committee:** Delete provision.

## **5. STUDY OF POTENTIAL MODIFICATIONS OF THE WISCONSIN RETIREMENT SYSTEM AND STATE EMPLOYEE HEALTH INSURANCE OPTIONS**

**Governor:** *Wisconsin Retirement System (WRS).* Require the Secretary of DOA, the Director of the Office of State Employment Relations (OSER), and the Secretary of ETF to study the structure of the WRS and benefits provided under the WRS. The study must specifically address the following issues: (a) establishing a defined contribution plan as an option for participating WRS employees; (b) establishing a vesting period of one, five, or 10 years for employer contributions, and for eligibility for retirement benefits; (c) modifying the supplemental health insurance conversion credits programs; and (d) permitting employees to not make employee required contributions and limiting retirement benefits for employees who do not make employee required contributions to a money purchase annuity. Provide that, no later than June 30, 2012, the Secretary of DOA, the OSER Director, and the Secretary of ETF must report their findings and recommendations to the Governor.

*Health Insurance Options.* Require the OSER Director and the Secretary of ETF to study the feasibility of offering to state employees and local governmental employees covered under health care insurance plans offered by the Group Insurance Board (GIB), beginning on January 1, 2013, the options of receiving health care coverage through either a low-cost health care coverage plan or through a high-deductible health plan and the establishment of a health savings account as defined in federal law. The OSER Director and the Secretary of ETF would also be required to study the feasibility of requiring state employees to receive health care coverage through a health benefits exchange established pursuant to the federal Patient Protection and Affordable Care Act of 2010, and creating a health care insurance purchasing pool for all state and local government employees and individuals receiving health care coverage under the Medical Assistance program. Require that, no later than June 30, 2012, the OSER Director and Secretary of ETF report their findings and recommendations to the Governor.

Create a GPR sum sufficient appropriation account under ETF to fund the cost of studies, including any actuarial studies and costs incurred by ETF, conducted under these provisions. Provide that no moneys may be expended from this appropriation without the approval of the Secretary of DOA.

Under current law, the WRS is a defined benefit pension system in which participants are vested immediately. The employee share of WRS contributions are currently required to be made, but may be made by the employer on behalf of the employee. Under the supplemental health insurance conversion credits program, an employee is credited at retirement with one hour of additional sick leave credit for each hour of unused accumulated sick leave up to a maximum of 52 hours per year for all years of service through the 24th year. For all years of continuous

service beyond the 24th year, an employee will be granted one hour of additional sick leave credit for each hour of previously accumulated sick leave up to a maximum of 104 hours per year. The credits may only be used for the payment of premium costs of continued state group health insurance in retirement. The value of the supplemental credits may be determined by multiplying the credited hours times the employee's highest base hourly pay rate. The supplemental credits do not provide additional sick leave to employees. The supplemental credits are in addition to sick leave credits provided to retiring employees for accumulated unused sick leave hours.

The establishment of health savings accounts are authorized under federal law. Individuals may establish health savings accounts into which they and their employers can make federal tax-exempt contributions that can be used for the payment of certain qualified medical expenses. Annual contribution limits are established under federal law and are based on the individual's status, eligibility, and health plan coverage. As a condition of establishing a health savings account, an individual must be covered under a high-deductible health plan. The specific requirements of high-deductible health plans are provided in federal law, but generally require the payment of a certain minimum deductible and the expenditure of certain out-of-pocket expenses before an individual's medical services are covered under the plan.

**Joint Finance:** Require a 14-day passive review by the Joint Committee on Finance prior to any expenditure.

**Conference Committee:** Delete provision.

## **6. MODIFY RETIREMENT MULTIPLIER FOR STATE EXECUTIVE AND ELECTED OFFICIAL WRS PARTICIPANTS**

**Governor/Joint Finance/Conference Committee:** Provide that, for WRS creditable service performed on or after the effective date of this provision, the multiplier used to calculate the normal pension benefit be reduced from 2% to 1.6% for state and local elected officials and state executives participating in the WRS. The provision has the effect of lowering the pension benefit for service performed after the effective date of the provision.

The provision would first apply to creditable service that is performed by elected officials (other than judges) on the first day of a term of office that begins after the effective date of the provision. For Supreme Court justices, Court of Appeals judges, and Circuit Court judges, the provision would first apply to creditable service that is performed on the day on which the next Supreme Court justice, Court of Appeals judge, or Circuit Court judge assumes office after the effective date of the provision.

Under current law, when a WRS participant becomes eligible for a retirement annuity, the amount of the annuity is determined by multiplying the participant's final average earnings by the participant's years of creditable service and by a percentage multiplier. [The multiplier is not applicable to a money purchase annuity.] For current service, the multipliers are as follows: general participants (1.6%); elected and executives (2%); protective under Social Security (2.0);

and protection not under Social Security (2.5%). The provision would reduce the multiplier for elected and executives to the same as that for general participants (1.6%).

## **7. REALLOCATION OF GROUP HEALTH AND PHARMACY BENEFIT RESERVES**

**Governor/Joint Finance:** Notwithstanding any action of the Group Insurance Board, require the Secretary of ETF to allocate, from reserve accounts established for group health insurance and pharmacy benefits for state employees, an amount equal to \$28,000,000 to reduce employer costs for providing group health insurance for state employees for the period beginning on July 1, 2011, and ending on December 31, 2011.

Under current law, ETF and the Group Insurance Board (GIB) have the authority to establish reserves to meet the requirements of providing health and pharmacy benefits. The monthly premiums charged for health insurance coverage for state employees include amounts that are allocated to the state's self-insured prescription drug plan to cover the prescription drug benefit costs of the program. In a report to GIB in August, 2010, the consulting actuary showed a net fund balance for the pharmacy reserve of \$90.8 million. The reserve for these pharmacy benefits includes accrued, but not received drug rebates and accrued Medicare retiree drug subsidies. DOA officials indicate that the reserve is large enough to support the one-time reallocation provided for under the bill. The bill does not specify how the reallocation of costs are to be made or how the savings will be captured by the state.

**Conference Committee:** Delete provision.

## **8. MANDATED HEALTH INSURANCE COST REDUCTIONS AND COPAYMENTS**

**Governor/Joint Finance/Conference Committee:** Provide that a current law restriction on the Group Insurance Board (GIB) modifying agreements for group insurance coverage for state employees would not apply to any agreements entered into by the GIB to modify group insurance coverage for the 2012 and 2013 calendar years. Require the GIB to design health care coverage plans for the 2012 calendar year that, after adjusting for any inflationary increase in health benefit costs, as determined by the GIB, reduces the average premium cost of plans offered in the tier with the lowest employee premium cost by at least 5% from the cost of such plans offered during the 2011 calendar year. Require the GIB to include copayments in the health care coverage plans for the 2012 calendar year and allow GIB to require health risk assessments for state employees and participation in wellness or disease management programs.

Under current law, GIB may not enter into agreements to modify or expand group insurance coverage in a manner that conflicts with applicable statutes, or rules promulgated by ETF, or that materially affects the level of premiums required to be paid by the state or its employees or the level of benefits provided under any group insurance coverage. Under the bill, this prohibition would not apply to GIB agreements relating to group insurance coverage for the 2012 and 2013 calendar years.

## **9. GROUP INSURANCE BOARD AUTHORITY: WELLNESS AND DISEASE MANAGEMENT PROGRAMS, DATA-COLLECTION CONTRACTS**

**Governor/Joint Finance:** Allow the Group Insurance Board to encourage participation in wellness or disease management programs. Current law, with certain exceptions, prevents the GIB from modifying or expanding group insurance coverage in such a manner as to materially affect the level of premiums paid by the state or its employees, or the level of benefits to be provided, under any group insurance coverage plan. The bill would provide that this restriction does not prevent GIB from encouraging participation in wellness or disease management programs under any of its group insurance coverage plans.

Allow the GIB to contract for any other consulting services related to the benefit plans offered by the Board. Authorize that the costs of contracts for other consulting services be paid from an ETF annual segregated appropriation account for health insurance data collection and analysis. Under current law, GIB may contract with the Department of Health Services (DHS) and other public or private entities for data collection and analysis services related to health maintenance organizations and insurance companies that provide health insurance to state employees. The bill would expand this authority to contracting for other consulting services.

**Conference Committee:** Delete the provision to allow the Group Insurance Board to contract for any other consulting services related to the benefit plans offered by the Board. Delete the provision to authorize that the costs of contracts for other consulting services be paid from an ETF annual segregated appropriation account for health insurance data collection and analysis.

## **10. AUDIT OF DEPENDENT ELIGIBILITY UNDER BENEFIT PROGRAMS**

**Governor/Joint Finance:** Provide that, if ETF determines that an audit of benefit programs administered by the Department is necessary for the purpose of verifying the eligibility of dependents covered under the benefit programs, the Department must submit a written request to the Secretary of DOA to expend an amount not exceeding \$700,000 SEG from ETF's administration appropriation account for the 2011–12 fiscal year to fund the cost of the audit. If the Secretary of DOA approves the request, ETF may proceed with the audit.

**Conference Committee:** Delete provision.

## **11. GROUP INSURANCE BOARD MEMBERSHIP REQUIREMENT**

**Governor:** Require that any designee of the Attorney General to the Group Insurance Board must be an attorney. Under current law, the Attorney General, or his or her designee, serves on the GIB; however, a designee does not have to be an attorney.

**Joint Finance/Conference Committee:** Delete provision.

## COLLECTIVE BARGAINING AND EMPLOYMENT RELATIONS PROVISIONS

### 1. PUBLIC EMPLOYEE COLLECTIVE BARGAINING MODIFICATIONS

**Governor/Joint Finance:** Modify the Municipal Employment Relations Act (MERA) and the State Employment Labor Relations Act (SELRA) to alter the collective bargaining rights of public employees in Wisconsin, with the exception of certain protective occupation participants under the Wisconsin Retirement System (WRS) or under the City of Milwaukee or Milwaukee County retirement systems.

*Represented Employee Classification.* Collective bargaining rights under current law would be retained for public safety employees only. Under MERA, a public safety employee would be defined as any municipal employee who is employed in a position classified as a protective occupation participant who is a police officer, a fire fighter, a deputy sheriff, a county traffic police officer, a person employed by a village to provide police and fire protection services, or a comparable position under the provisions of a county (Milwaukee) or city (Milwaukee) retirement system. Under SELRA, a public safety employee would be defined as a member of the state traffic patrol or a state motor vehicle inspector. All other represented municipal and state public employees, including school teachers and employees of the Wisconsin Technical College System, would be defined as general employees for the purposes of collective bargaining and would be subject to the modifications that follow.

*Prohibited Subjects of Collective Bargaining.* Prohibit any municipal employer under MERA or the state under SELRA from bargaining collectively with a collective bargaining unit containing a general municipal employee with respect to any factor or condition of employment except wages. Wages would include only total base wages and would exclude any other compensation, including, but not limited to, overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions. Unless approved by referendum as described below, prohibit any increase in base wages that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement by a greater percentage than the increase in the consumer price index. The Department of Revenue would be authorized, upon a request from WERC, to determine, for the purposes of these provisions, the average annual percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the federal Department of Labor, for the 12 months immediately preceding the request from WERC.

If there is a decrease in the consumer price index, the maximum salary level that can be bargained for would be the base amount minus the percentage decline in the CPI.

Provide that, if a local governmental unit (any city, village, town, county, metropolitan sewerage district, long-term care district, transit authority, technical college district, local cultural

arts district, or any other political subdivision of the state, or instrumentality of one or more political subdivisions of the state) wishes to increase the total base wages of its general municipal employees in an amount that exceeds these CPI limits, the governing body of the local governmental unit must adopt a resolution to that effect. The resolution must specify the amount by which the proposed total base wages increase will exceed the CPI limit. The resolution may not take effect unless it is approved in a referendum called for that purpose. The referendum must occur in November for collective bargaining agreements that begin the following January 1. The results of a referendum apply to the total base wages only in the next collective bargaining agreement. The referendum question must be substantially as follows: “Shall the general municipal employees in the local governmental unit receive a total increase in wages from \$[current total base wages] to \$[proposed total base wages], which is a percentage wage increase that is [x] percent higher than the percent of the consumer price index increase, for a total percentage increase in wages of [x]?”

These referendum provisions would also apply to elementary and secondary school districts, except that the referendum would occur in April for collective bargaining agreements that begin in July of that year. For state employees, a statewide referendum would be required, but there is no specification of the timing of the referendum or the required ballot language.

Provide that no local governmental unit, or any school district, except as provided under MERA, may collectively bargain with its employees. If a local governmental unit has in effect, on the effective date of the bill, an ordinance or resolution that is inconsistent with this requirement, the ordinance or resolution would not apply and may not be enforced. Each local governmental unit that is collectively bargaining with its employees would be required to determine the maximum total base wages expenditure that is subject to collective bargaining under the provisions of the bill.

*Collective Bargaining Unit Annual Certification.* Under MERA, require the Wisconsin Employment Relations Commission (WERC) to conduct an annual election to certify the representative of the collective bargaining unit that contains a general municipal employee. The election would be required to occur no later than December 1 for a collective bargaining unit containing school district employees and no later than May 1 for a collective bargaining unit containing general municipal employees who are not school district employees. WERC would be required to certify any representative that receives at least 51 percent of the votes of all of the general municipal employees in the collective bargaining unit. If no representative receives at least 51 percent of the votes of all of the general municipal employees in the collective bargaining unit, at the expiration of the collective bargaining agreement, WERC would be required to decertify the current representative and the general municipal employees would be nonrepresented. Provide that, if a representative is decertified the affected general municipal employees may not be included in a substantially similar collective bargaining unit for 12 months from the date of decertification. Require that WERC assess and collect a certification fee for each election that is conducted. Such fees would be credited to an existing WERC appropriation account.

In a nonstatutory provision under the bill, require that, for each collective bargaining unit

under MERA containing general municipal employees who are subject to an extension of their collective bargaining agreement, collective bargaining agreements must be terminated as soon as legally possible and employees must vote to certify or decertify their representatives as provided under the bill. Notwithstanding the dates provided above for unit certification, provide that the vote must be held in April, 2011.

Under SELRA, require WERC, in April, 2011, and no later than December 1, of each subsequent year, to conduct an election to certify the representative of a collective bargaining unit that contains a general employee. Require that the ballot include the names of all labor organizations having an interest in representing the general employees participating in the election. Allow WERC to exclude from the ballot one who, at the time of the election, stands deprived of his or her rights under labor law by reason of a prior adjudication of his or her having engaged in an unfair labor practice. Require WERC to certify any representative that receives at least 51 percent of the votes of all of the general employees in the collective bargaining unit. If no representative receives at least 51 percent of the votes of all of the general employees in the collective bargaining unit, at the expiration of the collective bargaining agreement, WERC would be required to decertify the current representative and the general employees would be nonrepresented. If a representative is decertified, the affected general employees may not be included in a substantially similar collective bargaining unit for 12 months from the date of decertification.

The WERC's certification of the results of any election would be conclusive unless reviewed as provided under administrative and procedure review law. Require that WERC assess and collect a certification fee for each election that is conducted and credit such fees to an existing WERC appropriation account.

Under current law, a collective bargaining unit selects a labor organization as its representative when a majority of the employees in that collective bargaining unit who are actually voting elects the labor organization as its representative. The labor organization remains the representative unless a percentage of members of the collective bargaining unit supports a petition for a new election and subsequently votes to decertify the representative.

*Union Dues Provisions.* Under MERA, prohibit a municipal employer from deducting labor organization dues from the earnings of a general municipal employee or supervisor. Under SELRA, prohibit the state from deducting labor organization dues from a general employee's earnings.

Provide that a general municipal or state employee would have the right to refrain from paying labor organization dues while remaining a member of a collective bargaining unit. [A public safety employee, however, may be required to pay dues, as provided under current law.]

Under current law, a fair-share agreement between the employer and a labor organization is permitted under which all of the employees in a collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members. A maintenance of membership agreement is an agreement between the employer and a labor

organization representing employees that requires that all of the employees whose dues are being deducted from earnings at the time the agreement takes effect must continue to have dues deducted for the duration of the agreement and that dues must be deducted from the earnings of all employees who are hired on or after the effective date of the agreement. Under the bill, these provisions would apply only to represented public safety employees. Fair-share and maintenance of membership agreements would not be allowed for represented general employees.

*Interest Arbitration under MERA.* Repeal current law interest arbitration provisions that allow general municipal employees, including teachers, to petition the WERC to initiate compulsory, final and binding arbitration if: (a) a dispute involving wages, hours and conditions of employment has not been settled after a reasonable period of negotiation and mediation by the WERC; and (b) any other settlement procedures established by the parties have been exhausted. Repeal factors that an arbitrator must consider in arriving at the arbitration award decision, including the factor given greatest weight, the factor given greater weight, and other factors to be considered. Repeal WERC's authority to adopt rules pertaining to the conduct of arbitration for general municipal employees.

Under current law, for general municipal employees, either or both parties in a dispute may petition the WERC to initiate compulsory, final and binding arbitration if: (a) a dispute involving wages, hours and conditions of employment has not been settled after a reasonable period of negotiation and mediation by the WERC; and (b) any other settlement procedures established by the parties have been exhausted. The statutes establish the procedures for the stages of the arbitration process, including the petition for WERC intervention, preliminary final offers, WERC investigation, final offers, appointment of an arbitrator, public hearing, arbitration hearing, and arbitration award. The statutes establish a variety of factors that the arbitrator must consider in arriving at the arbitration award decision. Except in arbitrations involving school district employees, the arbitrator must first give "greatest weight" to those state legislative and administrative directives that impose spending or revenue collection limitations on the municipal government. The arbitrator is required to provide a written accounting in the final arbitration decision of the consideration given to this "greatest weight" factor in making the award. Except in arbitrations involving school district employees, the arbitrator must next give "greater weight" to the economic conditions in the jurisdiction of the municipal employer. Lastly, in any arbitration involving general municipal employees, including school district employees, the arbitrator must give "weight" to a series of additional factors; however, there is no rank-ordering of these elements in terms of their relative importance.

*Strikes under MERA.* Provide that nothing contained in Wisconsin labor law constitutes a grant of the right to strike by any municipal employee or labor organization and such strikes are expressly prohibited. Repeal a current law provision that provides that, in addition to the other impasse resolutions under MERA, a municipal employer and labor organization may at any time, as a permissive subject of bargaining, agree in writing to a dispute settlement procedure, including authorization for a strike by municipal employees or binding interest arbitration that is acceptable to the parties for resolving an impasse over terms of any collective bargaining agreement. Repeal a current law interest arbitration provision that, after an arbitrator is appointed, but prior to the arbitration hearing, either party has the opportunity to withdraw its

final offer and any agreed modifications, and if both parties withdraw their final offers, the labor organization may strike, but only after having given 10 days' written, advance notice.

Under current law, strikes by municipal employees in Wisconsin are generally prohibited under MERA. Notwithstanding this general prohibition against strikes by municipal employees, strikes involving nonprotective municipal employees, including teachers, are permitted under limited circumstances. These limited circumstances, described in the paragraph above, would be repealed under the bill.

The bill would also provide that any labor organization representing municipal public safety employees which violates the prohibition on strikes may not collect any dues under a collective bargaining agreement or under a fair-share agreement from any public safety employee covered by either agreement for a period of one year. At the end of the period of suspension, any such agreement must be reinstated unless the labor organization is no longer authorized to represent the public safety employees covered by the collective bargaining agreement or fair-share agreement, or the agreement is no longer in effect.

Under current law, any labor organization that violates the current law prohibition on strikes must be penalized by the suspension of any dues check-off agreement and fair-share agreement between the municipal employer and the labor organization for a period of one year. At the end of the period of suspension, any such agreement must be reinstated unless the labor organization is no longer authorized to represent the municipal employees covered by such dues check-off or fair-share agreement or the agreement is no longer in effect.

Other strike penalties under current law are unaffected by the bill. These provisions include: (a) any labor organization which violates the strike prohibition after an injunction has been issued must be required to forfeit \$2 per member per day, but not more than \$10,000 per day, with each day of continued violation constituting a separate offense; and (b) any individual who violates the strike prohibition after an injunction against a strike has been issued must be fined \$10, with each day of continued violation constituting a separate offense. In addition, after the injunction has been issued, any municipal employee who is absent from work because of purported illness is presumed to be on strike unless the illness is verified by a written report from a physician to the municipal employer. The court is required to order that any fine imposed be paid by means of a salary deduction at a rate to be determined by the court.

*Term of Agreements.* Under MERA, provide that, except for the initial collective bargaining agreement between the parties and except as the parties otherwise agree, every collective bargaining agreement covering general municipal employees must be for a term of one year and may not be extended. [Note that the clause "and except as the parties otherwise agree," which is in current law, was intended to be stricken under the bill.] No collective bargaining agreement covering general municipal employees may be reopened for negotiations unless both parties agree to reopen the collective bargaining agreement. Under current law, except for an initial contract between the parties and unless the parties otherwise agree, collective bargaining agreements covering municipal employees must be for a term of two years. In no case, however, may a contract for non-school district employees exceed a term of three years, or a contract for

school district employees exceed a term of four years. Further, unless both parties agree, an arbitration award may not provide for a reopening of negotiations during the term of the collective bargaining agreement.

Under SELRA, provide that no agreements covering a collective bargaining unit containing a general employee may be for a period that exceeds one year, and each agreement must coincide with the state fiscal year. Provide that agreements covering a collective bargaining unit containing a general employee may not be extended. Under current law, agreements must coincide with the fiscal year or biennium. Current collective bargaining agreements are for the 2007-09 biennium and have been extended by mutual agreement of the state and labor organizations representing state employees. Under these agreements, the extension may be terminated by either party with either 10 or 30 days notice, depending on the agreement. [On February 11, 2011, the Director of the Office of State Employment Relations (OSER) informed the state's labor unions that the contract extensions would be terminated on March 13, 2011.]

#### *Other Provisions*

Retain current law methods for peaceful settlement of disputes for general municipal employees. These methods relate to notice of commencement of contract negotiations, presentation of initial proposals, mediation, and grievance arbitration.

Repeal a declaration of policy under MERA. Under current law, the statutes specify that: "The public policy of the state as to labor disputes arising in municipal employment is to encourage voluntary settlement through the procedures of collective bargaining. Accordingly, it is in the public interest that municipal employees so desiring be given an opportunity to bargain collectively with the municipal employer through a labor organization or other representative of the employees' own choice. If such procedures fail, the parties should have available to them a fair, speedy, effective and, above all, peaceful procedure for settlement as provided in this subchapter." The bill would repeal this language. In addition, under another MERA statutory provision, the bill deletes a statement that, in creating MERA, "the legislature recognizes that the municipal employer must exercise its powers and responsibilities to act for the government and good order of the jurisdiction which it serves, its commercial benefit and the health, safety, and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to municipal employees by the constitutions of this state and of the United States and by this subchapter."

Repeal the declaration of policy under SELRA. Under current SELRA law, a declaration of policy is made regarding the public policy of the state as to labor relations and collective bargaining in state employment. Briefly stated, it includes: (a) a discussion of public, employee, and employer interests; (b) the assertion that the orderly and constructive employment relations for employees and the efficient administration of state government are promotive of all these interests; (c) that negotiations of terms and conditions of state employment should result from voluntary agreement between the state and its employees and that employees have the option of organizing and bargaining collectively through representatives of the employee's own choosing; and (d) to encourage the practices and procedures of collective bargaining by establishing

standards of fair conduct in state employment relations and by providing a convenient, expeditious and impartial tribunal in which these interests may have their respective rights determined. The bill would repeal this declaration of policy.

Modify WERC's authority to determine appropriate collective bargaining units by prohibiting WERC from deciding that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both school district employees and general municipal employees who are not school district employees. Further, provide that WERC may not decide that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both public safety employees and general municipal employees. Under current law, a collective bargaining unit under MERA is defined as a unit consisting of municipal employees who are school district employees, or of municipal employees who are not school district employees, as determined by WERC to be appropriate for the purpose of collective bargaining. The bill would add the additional restriction described above to WERC's authority in this area.

Repeal a provision that requires the Director of OSER, prior to award and under conditions established by rule by DOA, to review contracts for contractual services in order to ensure that agencies properly utilize the services of state employees, evaluate the feasibility of using limited term appointments prior to entering into a contract for contractual services, and do not enter into any contract for contractual services in conflict with any collective bargaining agreement under SELRA or UW System faculty and academic staff labor relations.

Provide that a local cultural arts district created under Subchapter V of Chapter 229 (the Madison Overture Center) would be included in the definition of a municipal employer under MERA. Under the provision, general employees of the cultural arts district would be subject to the bill's MERA provisions. Under current law, this cultural arts district is specifically excluded from the provisions of MERA, but may collectively bargain with its employees under the provisions of subchapter I of Chapter 111 (Employment Peace).

Provide that it would be a prohibited practice for a municipal employer to violate any collective bargaining agreement affecting general municipal employees, that was previously agreed upon by the parties with respect to wages.

Repeal a provision that permits clerks in the Municipal Court in Milwaukee to bargain over supervision issues. The current law provision is inconsistent with the modifications to MERA under the bill.

Under current law, the state is not required to bargain on matters related to employee occupancy of houses or other lodging. Under the bill, this provision is repealed. The provision is inconsistent with the modifications to SELRA under the bill.

Nonstatutory language would provide that, upon termination of any collective bargaining agreement between the state and a labor organization representing state employees, the OSER Director may continue to administer those provisions of the collective bargaining agreements that the Director determines necessary for the orderly administration of the state civil service system

until the compensation plan under section 230.12 of the statutes is established for the 2011–13 fiscal biennium.

Provide that, if an employee is covered under a collective bargaining agreement under SELRA, the state's compensation plan provisions would apply to that employee, except for those provisions relating to matters that are subject to bargaining under a collective bargaining agreement that covers the employee.

Require DOA to evaluate the staffing requirements of WERC and to submit the report of the evaluation to the Joint Committee on Finance under section 13.10 of the statutes.

### *Initial Applicability*

The treatment of these provisions would first apply to employees who are covered by a collective bargaining agreement, under either MERA or SELRA, that contains provisions inconsistent with these provisions on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.

**Assembly:** Delete the clause "and except as the parties otherwise agree," in the provision that, except for the initial collective bargaining agreement between the parties and except as the parties otherwise agree, every collective bargaining agreement covering general municipal employees must be for a term of one year and may not be extended. This is a technical correction to accurately reflect the intent of the provision.

**Conference Committee:** Delete the MERA provision to require that WERC assess and collect a certification fee for each election that is conducted and credit such fees to an existing WERC appropriation account. Delete the SELRA provision to require that WERC assess and collect a certification fee for each election that is conducted and credit such fees to an existing WERC appropriation account.

## **2. REPEAL COLLECTIVE BARGAINING RIGHTS FOR UNIVERSITY OF WISCONSIN SYSTEM FACULTY AND ACADEMIC STAFF**

**Governor/Joint Finance/Conference Committee:** Repeal Subchapter VI of Chapter 111 that provides faculty and academic staff of the University of Wisconsin System (UW System) with the right to collectively bargain over wages, hours, and conditions of employment. Collective bargaining rights were granted to UW System faculty and academic staff under 2009 Wisconsin Act 28. Under current law, the Board of Regents is authorized to negotiate and administer collective bargaining agreements for UW faculty and academic staff, to represent the state in its responsibility as an employer, and to coordinate its actions with the Director of the Office of State Employment Relations. To date, no collective bargaining agreements have been negotiated with faculty or academic staff. Under the bill, all provisions relating to UW System faculty and academic staff collective bargaining would be repealed.

### 3. LOCAL GOVERNMENT CIVIL SERVICE SYSTEMS

**Joint Finance/Conference Committee:** Require a local governmental unit (a political subdivision of the state, a special purpose district in the state, an agency or corporation, of a political subdivision or special purpose district, or a combination or subunit of any of the foregoing) that does not have a civil service system on the effective date of the bill to establish a grievance system not later than the first day of the fourth month beginning after the effective date of the bill. Provide that, to comply with the required grievance system a local governmental unit may establish either a civil service system under any provision authorized by law, to the greatest extent practicable, if no specific provision for the creation of a civil service system applies to that local governmental unit, or establish a grievance procedure as described below.

Provide that, any civil service system that is established under any provision of law, and any grievance procedure that is created under the above provisions, must contain at least all of the following provisions: (a) a grievance procedure that addresses employee terminations; (b) employee discipline; and (c) workplace safety.

If a local governmental unit creates a grievance procedure under these provisions, the procedure must contain at least all of the following elements: (a) a written document specifying the process that a grievant and an employer must follow; (b) a hearing before an impartial hearing officer; and (c) an appeal process in which the highest level of appeal is the governing body of the local governmental unit.

Provide that, if an employee of a local governmental unit is covered by a civil service system on the effective date of the bill, and if that system contains provisions that address the above provisions, the provisions that apply to the employee under his or her existing civil service system continue to apply to that employee.

Provide that the treatment of provisions first apply on the first day of the fourth month beginning after the effective date of the bill.

<b>SHARED REVENUE AND TAX RELIEF</b>
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#### 1. TAX INCREMENTAL FINANCING DISTRICT -- INCLUSION OF WETLANDS

**Joint Finance/Conference Committee:** Modify a current law limitation to allow a wetland that has been converted in compliance with state law to no longer be a wetland to be included in a tax incremental financing (TIF) district. Specify that for an area that is identified on a wetland map and that is within the boundaries of a TIF district, or is part of a TIF district parcel, the area would be considered part of the TIF district for determining the applicability of

exemptions from, or compliance with, water quality standards that are applicable to wetlands.

2011 Act 10 exempts an activity affecting a Village of Ashwaubenon wetland from the water quality standards applicable to wetlands and from any prohibition, restriction, requirement, permit, license, approval, authorization, fee, notice hearing or procedure, penalty, specified rule promulgated, order issued, or ordinance adopted if the activity meets certain requirements, including the site of the activity is zoned for community business use and is part of a TIF district. However, under current law, a TIF district cannot include a wetland.