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May 8, 2009

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 255/Senate Bill 189

Attached is a paper, prepared by this office, on companion bills 2009 Assembly Bill 255 and 2009 Senate Bill 189.

The bills have been scheduled for executive action by the Committee at 11:00 a.m. on Tuesday, May 12, in Room 412 East, State Capitol.

BL/sas
Attachment

# ASSEMBLY BILL 255/SENATE BILL 189

## SUMMARY OF PROVISIONS

## ADMINISTRATION

### 1. LOW-INCOME ENERGY ASSISTANCE INCOME LIMITATION

Provide that households with an income of not more than 60% of the statewide medium household income would be eligible for low-income energy assistance.

Under current law, eligibility is limited to households with income of less than 150% of the federal poverty guidelines. For federal fiscal year 2009, this provision would change the annual income limitation for a four person household from $33,075 to $43,497.

[Bill Sections: 1 and 2]

### 2. OFFICE OF JUSTICE ASSISTANCE -- FEDERAL AID APPROPRIATION

Create a federal aid; criminal justice appropriation under the Department of Administration's Office of Justice Assistance (OJA) to receive one-time federal funding under the federal American Recovery and Reinvestment Act (ARRA). The appropriation would authorize OJA to expend all moneys received for criminal justice programs to carry out the purpose for which received. The appropriation would be utilized to receive $18,843,600 FED in federal Byrne Justice Assistance Grant funding.

As in 2005-07, under 2007 Wisconsin Act 20 the Legislature directed OJA to utilize 44% of federal Byrne Justice Assistance Grant awards received during 2007-09 (for local awards) for multijurisdictional enforcement groups. Creation of this appropriation would exempt the ARRA Byrne award from this provision. Multijurisdictional enforcement groups are cooperative multi-agency law enforcement efforts to prosecute criminal drug violations of Chapter 961 (the Uniform Controlled Substances Act).

There is no sunset for this appropriation under the bill.

[Bill Section: 3]

## CHILDREN AND FAMILIES

### 1. COMMUNITY ACTION AGENCIES

Modify the definition of "poor person" served by local community action agencies to mean a resident whose income is at or below 200% of the federal poverty level, rather than 125% of the federal poverty level under current law, beginning on the bill's general effective date until September 30, 2010. In addition, restore the definition of "poor person" served by local community action agencies to mean a resident whose income is at or below 125% of the federal poverty level, beginning October 1, 2010.

The federal community services block grant (CSBG) program provides states and Indian tribes with funds to lessen poverty in communities. The funds are used to assist the needs of low-income individuals, including the homeless, migrants, and the elderly, and must be used to address: (a) employment; (b) education; (c) better use of available income; (d) housing; (e) nutrition; (f) emergency services; or (g) health. The CSBG Act mandates that states pass through 90% of the funds allocated to eligible entities, and up to 5% can be used by states and Indian tribes for administrative costs. Federal law requires eligibility for persons who receive services with CSBG funds to be set at or below 125% of the federal poverty level.

Under state law, at least 90% of CSBG funds are distributed to community action agencies. Community action programs assist poor persons to: (a) secure and retain employment; (b) improve their education; (c) make better use of available income; (d) obtain and maintain adequate housing and a suitable living environment; (e) secure needed transportation; (f) obtain emergency assistance; (g) participate in community affairs; and (h) use more effectively other available programs.

The federal American Recovery and Reinvestment Act of 2009 (ARRA) provides additional CSBG funding for states in federal fiscal year (FFY) 2009. It is estimated that Wisconsin will receive $12.2 million in additional CSBG funding. None of the additional funds may be used for administrative expenditures. However, states may reserve 1% for benefits enrollment coordination activities relating to the identification and enrollment of eligible individuals and families in benefit programs. The remaining 99% must be passed through to community action agencies. In addition, the ARRA authorizes states to increase eligibility for individuals who receive services with CSBG funding from 125% of the federal poverty level to 200% of the federal poverty level from October 1, 2008, through September 30, 2010.

As authorized under the ARRA, the bill would increase eligibility for individuals who receive services from community action programs to 200% of the federal poverty level from the bill's general effective date through September 30, 2010.

[Bill Sections: 4, 5, 9400(1), and 9408(1)]

## GENERAL FUND TAXES

### 1. ENTERPRISE ZONE PROGRAM MODIFICATIONS

Modify the enterprise zone tax credit and enterprise zone program as follows:

a. Provide that the refundable enterprise zones tax credit be based on employees whose annual wages are greater than $20,000 in a tier I county or municipality, or greater than $30,000 in a tier II county or municipality. In addition, the Department of Commerce would determine the percentage rate for the tax credit, up to 7%.

b. Create an additional refundable tax credit equal to the percentage up to 7%, as determined by Commerce, of the claimant's zone payroll paid in the tax year to full-time employees who were employed in the enterprise zone in the tax year and whose annual wages were greater than $20,000 in a tier I county or municipality, or greater than $30,000 in a tier II county or municipality, not including the wages paid to employees that were used to claim the enterprise zones jobs credit. The total number of employees would have to equal or be greater than the number of employees in the base year. (The tax year prior to the year in which the enterprise zone was created.) Credit claims would be limited to five consecutive years.

c. Commerce could certify a business that retained jobs in an enterprise zone as eligible for enterprise zones tax credits, but only if the business made a significant capital investment in property located in the zone, and at least one of the following applied: (1) the business was an original equipment manufacturer with a significant supply chain in Wisconsin, as determined by Commerce; or (2) more than 500 full-time employees were employed by the business in the enterprise zone. The term "original equipment manufacturer with a significant supply chain in the state" would be defined by Commerce, by administrative rule.

d By rule, Commerce could specify circumstances under which it could grant exceptions to the requirement that a full-time employee means an individual who as a condition of employment is required to work at least 2,080 hours a year. However, under no circumstances, would a full-time employee mean an individual who as a condition of employment was required to work less than 37.5 hours per week.

e. The current 50-acre limit on the size of an enterprise zone would be eliminated.

f. Commerce would be required to specify whether an enterprise zone was located in a tier I or tier II county or municipality, and promulgate rules defining "tier I county or municipality" and "tier II county or municipality." The Department could consider all of the following information when establishing the definitions: (1) unemployment rate; (2) percentage of families with incomes below the poverty line; (3) median family income; (4) median per capita income; and (5) other significant or irregular indicators of economic distress, such as a natural disaster or mass layoff.

Commerce would be authorized to promulgate emergency rules, without the finding of

an emergency, that would remain in effect until July 1, 2010, or the date on which permanent rules took effect, whichever was sooner. If the Secretary of Administration required Commerce to prepare an economic impact report for the rules required under the provisions of the bill, the Department could submit the proposed rules to the Legislature for review before Commerce completed the economic impact report and before the Department received a copy of DOA approval of the report.

Modifications to the enterprise zone jobs tax credit provisions would first apply to tax years beginning on or after January 1, 2009.

*Current Law.* The enterprise zone program was created by 2005 Wisconsin Act 361. Under the enterprise zone program, Commerce is authorized to designate up to 10 areas in the state of not more than 50 acres as enterprise zones. A zone designation cannot last more than 12 years. Eligible businesses that conduct operations in an enterprise zone that are certified by Commerce can claim the refundable enterprise zones jobs tax credit.

The enterprise zones jobs tax credit is a refundable tax credit and is provided under the state individual income and corporate income and franchise taxes. Under current law, the enterprise zones jobs tax credit is calculated as follows:

a. Determine the lesser of: (1) the number of full-time employees that are employed in an enterprise zone whose annual wages are greater than $30,000 in the tax year minus the number of full-time employees that are employed in the enterprise zone in the base year whose annual wages are greater than $30,000 in the base year; or (2) the number of full-time employees in the state whose annual wages are greater than $30,000 in the tax year minus the number of full-time employees in the state whose annual wages are greater than $30,000 in the base year.

b. Determine the claimant's average zone payroll by dividing total wages for full-time employees in the zone whose annual wages are greater than $30,000 for the tax year by the number of those employees.

c. Subtract $30,000 from the average wage determined under " b."

d. Multiply the amount determined under "c" (average wage in excess of $30,000 a year) by the number determined under "a" (net number of new employees hired in the zone).

e. Multiply the amount determined under "d" by 7%.

A supplemental tax credit is available based on qualified training expenses.

Commerce is required to certify a business as eligible for the enterprise zone jobs tax credit. The Department may certify for tax benefits any of the following:

a. A business that begins operations in an enterprise zone.

b. A business that relocates to an enterprise zone from outside the state, if the

business offers compensation and benefits to its employees working in the zone for the same type of work that are at least as favorable as those offered outside the zone.

c. A business that expands its operations in an enterprise zone, and increases its personnel by at least 10%, and enters into an agreement with Commerce to claim tax benefits only for years during which the business maintains the increased level of personnel. The business must offer compensation and benefits for the same type of work to its employees working in the enterprise zone that are at least as favorable as those offered to its employees working in Wisconsin but outside the zone.

d. A business that expands its operations in an enterprise zone and that makes a capital investment in property located in the enterprise zone if the following apply: (1) the value of capital investment is equal to at least 10% of the business' gross revenues from business in the state in the preceding tax year; (2) the business enters into an agreement with Commerce to claim tax benefits only for years during which the business maintains the capital investment; and (3) the business offers compensation and benefits for the same type of work to its employees in the zone that are at least as favorable as those offered to employees working in Wisconsin, but outside the zone (as determined by Commerce).

Under the provisions of Assembly Bill 75 (the 2009-11 biennial budget bill), funding appropriated for the refundable enterprise zone jobs tax credit would be $1,625,000 GPR in 2009-10 and $1,865,000 in 2010-11. The provisions of AB 255/SB 189 would expand the program, but the additional costs are indeterminate.

[Bill Sections: 13 thru 42, 64 thru 70, 9110(1)&(2), and 9343(1)]

## ENVIRONMENTAL IMPROVEMENT FUND

### 1. CLEAN WATER AND SAFE DRINKING WATER PROJECTS

Make changes in the clean water fund and safe drinking water loan programs within the environmental improvement fund, to allow use of federal grants received by the state under ARRA for the two programs through June 30, 2011. DNR and DOA jointly administer the programs.

The clean water fund program uses a combination of federal capitalization grants and state funds to provide low-interest loans to municipalities for planning, designing, constructing or replacing a wastewater treatment facility, and for certain nonpoint source or urban stormwater pollution abatement projects. The program also provides hardship financial assistance with loan interest rates as low as 0% and grants for up to 70% of project costs for certain municipalities that meet specified criteria relating to household income and wastewater charges.

The safe drinking water loan program uses federal capitalization grants and state funds to provide low-interest loans to municipalities for planning, designing, constructing, or modifying public drinking water systems. The program does not have a grant component.

The bill would authorize DNR and DOA to allocate ARRA funds received for the clean water fund program and safe drinking water loan program before July 1, 2011, for projects eligible under the state programs. The bill includes the following provisions:

a. Applications for ARRA funds could be approved and funds could be allocated and expended for projects before the 2009-11 biennial budget is enacted to establish the present value subsidy provided for each program. (A technical correction would be required to include the proper cross reference for safe drinking water projects.)

b. The amount of the present value subsidy provided for financial assistance for clean water fund projects funded with ARRA funds would be $105,948,300, and for safe drinking water projects would be $37,750,000. This would be in addition to the regular present value subsidy limit provided for each of the programs in the 2009-11 biennial budget. The present value subsidy limit typically is a measure of the amount of state or federal subsidy provided for projects during the biennium. Since the federal funds may be awarded as grants, and since no state match is required, these figures represent the approximate level of federal funding expected to be available.

c. DNR would be authorized to establish a percentage limit on the amount of financial assistance available through ARRA funds to any eligible applicant.

d. DNR and DOA could provide grants or loans. Municipalities would not have to be eligible under current clean water fund program financial hardship criteria in order to be eligible for a clean water grant. DNR could waive the current requirement that a municipality eligible for a grant under current clean water fund financial hardship criteria must pay at least 30% of the cost.

e. Loans could be provided at interest rates different from the rates provided under the regular program. Loans could include negative interest rates that result in total payments that are less than the principal amount of the loan. Financial assistance agreements could provide for forgiveness of a portion of the loan principal.

f. DNR could establish a different deadline for municipalities to submit a notice of intent to apply for ARRA funds. The current requirement is that a municipality submit the notice at least six months before the fiscal year in which it will request assistance.

g. DNR could establish a deadline for submitting applications for clean water fund financial assistance. The current clean water fund program operates on a continuous funding cycle.

h. DNR could waive the current safe drinking water loan program application deadline of April 30 if it has not received sufficient applications to use all of the ARRA funds received for the safe drinking water loan program.

i. DNR could consider any of the following in determining which projects to provide financial assistance: (1) readiness of a project to proceed to construction; (2) the unemployment rate in the county in which a project is located; (3) the extent to which a project promotes water efficiency or energy efficiency, is environmentally innovative, or uses natural systems or engineered systems that mimic natural processes, also called green infrastructure; or (4) the geographic distribution of projects.

j. DNR and DOA would not be required to promulgate rules to administer the ARRA provisions.

[Bill Sections: 9137(1)&(2)]

## INSURANCE

### 1. CONTINUATION COVERAGE -- STATE ELIGIBLE INDIVIDUALS

Create provisions that would provide "state eligible individuals" who were eligible for continuation coverage prior to the effective date of the bill but chose not to purchase continuation coverage, the opportunity to elect to purchase continuation coverage, under conditions specified in the bill. "Continuation coverage" refers to health insurance coverage purchased through an employer that a former employee may continue to receive after employment is terminated, if the employee elects to purchase it.

The purpose of this provision is to enable these individuals to take advantage of a 65% premium subsidy that is available, for a limited period, under the American Recovery and Reinvestment Act of 2009 (ARRA).

**Background**

Under federal law, an individual whose employment is involuntarily terminated, and worked for an employer with over 20 employees, may elect to purchase continued group insurance coverage under provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). State law allows individuals whose employment is involuntarily terminated to elect to purchase continued group insurance coverage, regardless of the number of employees of a business. Under both the federal COBRA coverage and state continuation coverage, the former employee may be responsible to pay for the employee and employer share of the group policy insurance premium.

Under ARRA, individuals whose employment is involuntarily terminated between September 1, 2008, and December 31, 2009, are eligible to receive a subsidy of 65% of the premium that he or she may be required to pay under the federal COBRA, for up to nine months. This subsidy is also available to state programs that provide comparable continuation coverage.

**Summary**

The provisions of AB 255/SB 189 would ensure that an individual whose employment is or was terminated between September 1, 2008, and December 31, 2009, and who worked for a business with 20 or fewer employees, and who continue group insurance coverage under Wisconsin's state continuation coverage provisions, would be eligible to receive the federal subsidy. These provisions align the notice requirements for individuals who had previously elected to not purchase state continuation coverage with the corresponding notice requirements in ARRA.

*Definitions.* Define the following terms.

a. "Covered employee" means a person who was previously covered under an employer's group policy.

b. "Federal act" means the American Recovery and Reinvestment Act of 2009 (P.L. 111-5).

c. "Group policy" means any of the following: (a) an insurance policy issued on behalf of a group whose members receive hospital or medical coverage, other than for specified diseases or for accidental injuries; (b) an uninsured plan or program whereby a health maintenance organization, limited service health organization, preferred provider plan, labor union, religious community or other sponsor contracts to provide hospital or medical coverage to members of a group, other than for specified diseases or for accidental injuries; or (c) a plan or program whereby a sponsor arranges for the mass marketing of franchise insurance to members of a group related to one another through their relationship with the sponsor. This definition is a cross reference to a current definition in Chapter 632.

d. "Insurer" includes an insurer that issues a group policy that replaces or succeeds a group policy in effect on the date that a terminated insured is first entitled to elect continuation coverage.

e. "State eligible individual" means a covered employee, or a covered employee's spouse or dependent, to whom all of the following apply:

1. The covered employee's employment is involuntarily terminated between September 1, 2008, and December 31, 2009, and the involuntary termination is the qualifying event for continuation of coverage for the covered employee, or the covered employee's spouse or dependent; and

2. The covered employee, or the covered employee's spouse or dependent, is not eligible for continuation of coverage under a federal continuation provision, and becomes eligible for state continuation coverage between September 1, 2008, and December 31, 2009.

f. "Terminated insured" means a person entitled to elect continued or conversion coverage, as defined in Chapter 632 of the statutes.

*Additional Coverage Opportunity for State Eligible Individuals Eligible Prior to Effective Date of the Bill.* Require an insurer to permit a terminated insured, on behalf of a state eligible individual who became eligible for state continuation coverage between September 1, 2008, and the bill's effective date, and who does not have continuation coverage on the effective date of the bill, to elect continuation coverage during a 60-day period beginning on the date of notice required in the bill.

Require an employer to provide notice to a terminated insured who may elect state continuation coverage for a state eligible individual, that he or she may elect continuation of coverage for the state eligible individual, regardless of whether the employer has already provided notice to the individual. Specify that the notice: (a) be provided no later than 10 days after the effective date of the bill; (b) include information substantially in the form and provided in the manner required for the federal notice under ARRA; (c) be modified to reflect that the right to elect continuation coverage is governed by this provision; and (d) include a description of the individual's right to elect continuation coverage under this provision and s. 632.897 of the statutes, and the effect of electing such coverage. This notice would not be effective, and the 60-day period for electing continuation coverage would not commence, unless the notice contains all the information required in the provision.

Provide that if an employer that is required to provide the notice fails to provide the notice, the insurer that would be responsible for providing continuation coverage to the state eligible individual would be required to provide the notice.

Provide that, for state eligible individuals who became eligible for state continuation coverage before February 17, 2009 (the effective date of ARRA), but did not have such coverage on that date, state continuation coverage that is elected under these provisions would be effective as of the date of the first coverage period after February 17, 2009. This coverage would not be required to extend beyond the period that would have been required under statute, had the individual elected continuation of coverage when originally eligible, rather than under these provisions.

For state eligible individuals who became eligible for state continuation coverage on or after February 17, 2009, and before the effective date of the bill, state continuation coverage that is elected under these provisions would be effective as of the date that the individual was originally eligible for coverage. This coverage would not be required to extend beyond the period that would have been required under statute, had the individual elected continuation of coverage when originally eligible, rather than under these provisions.

Specify that the requirements to allow a terminated insured to elect continuation coverage, and to provide notice to a terminated insured, would not apply if an employer or insurer provided a notice of continuation coverage that included all the information required in this provision. Provide that if an employer or insurer provided notice that complies with the notice requirements in these provisions, but did so before the effective date of the provisions, the notice would be effective for the purposes of the bill, and the 60-day period for election of continuation coverage would begin on the date the notice was provided. Provide that an individual who elects

continuation coverage under these provisions would have satisfied the requirements to elect continuation coverage as a requirement of eligibility for the health insurance risk-sharing plan.

For the purposes of determining the allowable 63-day coverage gap in creditable coverage with respect to preexisting condition exclusions, disregard the period from the date of termination of an individual's coverage to the commencement of continuation of coverage under these provisions, for individuals who elect continuation of coverage under these provisions.

*Notice for State Eligible Individuals Eligible on the Effective Date of the Bill.* Require an employer of an individual who becomes eligible for continuation coverage during the period from the effective date of the bill to December 31, 2009, to provide notice of the availability of continuation coverage. This notice would be required to include information substantially in the form required for the federal notice under ARRA, and be provided in the manner required for the federal notice under ARRA.

*Rulemaking Authority.* Authorize the Commissioner of Insurance to promulgate rules establishing standards requiring insurers to provide continuation coverage to any state eligible individual to whom these provisions apply, or to any assistance eligible individual as defined in the ARRA, who was covered at any time under a group policy. These could include rules governing election periods, extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternate coverage.

Authorize the Commissioner to promulgate these rules as emergency rules under s. 227.24 of the statutes. The rules promulgated would be able to remain in effect for one year, and would be allowed to be extended, as provided under Chapter 227 of the statutes. The Commissioner of Insurance would not be required to provide evidence that promulgating these rules as emergency rules is necessary for the preservation of public peace, health, safety, or welfare, and would not be required to provide a finding of emergency for a rule promulgated under this section.

[Bill Sections: 64, 71 and 9126(1),(2),(3),&(4)]

## PUBLIC INSTRUCTION

### 1. PUPIL RECORDS CONFIDENTIALITY

Delete the current law requirement that the Department of Public Instruction (DPI) keep confidential all pupil records provided to the Department by a school board.

Under current law, a school board must provide the Department with any information contained in a pupil record that relates to an audit or evaluation of a federal or state-supported program that is required in order to determine compliance with the statutes. DPI is required to keep confidential all pupil records provided to the Department under this provision.

Irrespective of state law, the confidentiality of pupil records would still be subject to the requirements of the federal Family and Educational Rights and Privacy Act (FERPA). Based on information from the federal Department of Education, generally schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following: (a) school officials with legitimate educational interest; (b) other schools to which a student is transferring; (c) specified officials for audit or evaluation purposes; (d) appropriate parties in connection with financial aid to a student; (e) organizations conducting certain studies for or on behalf of the school; (f) accrediting organizations; (g) to comply with a judicial order or lawfully issued subpoena; (h) appropriate officials in cases of health and safety emergencies; and (i) state and local authorities, within a juvenile justice system as authorized under state law.

[Bill Section: 63]

## SHARED REVENUE AND TAX RELIEF

### 1. EXPENDITURE RESTRAINT BUDGET TEST

Modify the definition of municipal budget under the budget test for the expenditure restraint program to exclude expenditures of moneys received pursuant to the American Recovery and Reinvestment Act (ARRA) of 2009. To receive aid under the expenditure restraint program, a municipality must satisfy two eligibility criteria. First, the municipality must have a municipal purpose tax rate that exceeds five mills. Second, the municipality must restrict the rate of year-to-year growth in its budget to a percentage determined by statutory formula. Current law excludes expenditures for principal and interest on long-term debt, certain revenue sharing payments, and recycling fee payments from the definition of municipal budget for purposes of the budget test calculation. Since this change would be effective on the general effective date of the bill, it would first apply to municipal budgets for 2009, which are used to determine eligibility for expenditure restraint payments in 2010. In AB 75, the Governor proposes to utilize $50 million in funding from ARRA to partially fund county and municipal aid payments in 2010 (2010-11). Consequently, any municipal expenditures funded with that revenue would be excluded from the expenditure restraint program's budget test.

[Bill Section: 43]

### 2. MUNICIPAL AND COUNTY ENERGY EFFICIENCY LOANS

Authorize municipalities and counties to make loans to residents of the municipality or county for making or installing energy efficiency improvements or renewable resource applications to their residential property. Authorize municipalities or counties to collect loan

repayments as special charges under current law procedures, except permit loan repayments to be collected in installments. Authorize special charges imposed under these provisions to be included in the current or next tax roll even if the special charge is not delinquent. Define "energy efficiency improvement" as an improvement to a residential premises that reduces the usage of energy, or increases the efficiency of energy usage, at the premises. The bill would not define "renewable resource application." Municipalities and counties would be responsible for raising the revenues to make energy efficiency loans. The American Recovery and Reinvestment Act of 2009 authorizes the issuance of two new types of debt instruments called "Qualified Energy Conservation Bonds" and "Build America Bonds" that might be used to raise revenue for loans. The federal act also increased funding for energy efficiency and conservation block grants, which large cities and counties might use as a funding source.

[Bill Sections: 6 thru 12]

## WORKFORCE DEVELOPMENT

### 1. UNEMPLOYMENT INSURANCE -- FEDERAL UNEMPLOYMENT INSURANCE MODERNIZATION FUNDING ALLOCATION

The federal American Recovery and Reinvestment Act (ARRA) includes $7.0 billion for unemployment insurance (UI) modernization that is allocated to individual states if the state unemployment insurance law meets certain requirements. The state's total potential share of the federal UI modernization funds is $133.9 million. One-third of the state allocation is transferred if the state UI law provides for an alternative base period for UI benefit eligibility. Under Wisconsin UI law, the "base period" is generally the first four of the five most recently completed calendar quarters. However, state law also provides that, if an employee does not qualify to receive any benefits using that base period, then the employee's base period is the four most recently completed quarters preceding the benefit year. As a result, the state UI law meets the federal requirement, and the state has been allocated $44.6 million of the $139.9 million in UI modernization funds.

The remainder of the state allocation of UI modernization funds ($89.3 million for Wisconsin) is allocated to the state if the state UI law meets two of four requirements:

a. *Part-Time Work.* An individual may not be denied eligibility for regular UI benefits solely because the individual is seeking part-time work. State law provisions may exclude an individual if a majority of the weeks of work in the individual's base period do not include part-time work.

b. *Compelling Family Reasons.* An individual may not be disqualified from regular UI benefits for separating from employment, if that separation is for any compelling family reason. Under the federal provisions, "compelling family reason" includes fear of domestic violence,

illness or disability of an immediate family member, and the need to accompany a spouse to a new job.

c. *Enrollment in Training Programs.* Weekly unemployment compensation must be payable to an unemployed individual who has exhausted regular state UI benefits and is enrolled and making satisfactory progress in a state-approved or federal Workforce Investment Act job training program. In Wisconsin, the individual would be eligible for additional UI benefits equal to 26 times the claimant's weekly benefit rate.

d. *Dependent's Allowances.* Dependent allowances of at least $15 per dependent, per week must be paid for any individual entitled to receive UI benefits. States are authorized to limit the total amount of dependent benefits paid to an individual to the lesser of 50% of the individual's weekly benefit amount, or $50.

Current Wisconsin UI law provisions do not conform to required federal modernization provisions for any of the four items. Consequently, Assembly Bill 255/Senate Bill 189 includes provisions that would modify current the state UI law to conform to required federal provisions related to the exception from disqualification for UI benefits because of compelling family reasons, and the payment of UI benefits to individuals in state-approved training programs.

*Disqualification Exclusion for Voluntary Termination of Employment for Compelling Family Reasons.* Under current law, in most circumstances, an employee who voluntarily terminates his or her employment with an employing unit is ineligible to receive any benefits unless he or she requalifies. An individual whose employer grants the individual's voluntary request to indefinitely reduce the number of hours he or she works may be treated as voluntarily terminating employment. In order to requalify, four weeks must elapse since the end of the week in which the termination occurs and the employee must earn wages equal to at least four times the weekly benefit rate that would have been received had the termination not occurred. The benefits based on wages paid by the employer from whom the claimant voluntarily terminates employment are charged to the unemployment reserve fund's balancing account.

There are a number of exceptions to this general requalification requirement in state law including: termination with good cause attributable to the employer, including sexual harassment where the employer knew or should have known but failed to take corrective action; termination because the employee's health or a family member's health left no reasonable alternative; termination to accept a recall to work from a former employer; termination due to certain transfers to another work shift; termination due to domestic abuse or threats to personal safety; termination of part-time employment to accept full-time employment; termination of employment due to honorable discharge from military service; and termination to accept another job in covered employment if that job offers the employee better pay, more hours, or longer-term employment, or if it is closer to the employee's home.

AB 255/SB 189 would modify current law provisions that provide exclusions from ineligibility and requalification requirements for voluntary termination of work that relate to termination for health reasons and domestic abuse, and create a provision related to

accompanying a spouse to a new job.

The bill provides that voluntary termination ineligibility and requalification provisions would not apply if the employee terminated his or her work because of the verified illness or disability of a member of his or her immediate family and the verified illness or disability reasonably necessitated the care of the family member for a period of time that is longer than the employer was willing to grant leave. Under current law, the exclusion is provided in cases where the employee had no reasonable alternative because the employee was is unable to do his or her work because of the health of a member of his or her immediate family. If the Department of Workforce Development (DWD) determines that the employee is unable to work or unavailable for work, the employee is ineligible to receive benefits while such inability or unavailability continues.

AB 255/SB 189 would modify the current law disqualification exclusion for an employee that terminates his or her work due to domestic abuse, concerns about personal safety or harassment, concerns about the safety or harassment of his or her family members who reside with the employee, or concerns about the safety or harassment of other household members. The bill would require that the employee provide to the Department a protective order relating to the domestic abuse or concerns about personal safety or harassment issued by a court of competent jurisdiction, a report by a law enforcement agency documenting the domestic abuse or concerns, or evidence of the domestic abuse or concerns provided by a health care professional or an employee of a domestic violence shelter. Under current law, prior to terminating employment, the employee is required to obtain a temporary restraining order, court injunction, or a foreign protection order, and demonstrate to DWD that the order has been or is reasonably likely to be violated.

The definition of domestic abuse would be expanded to include abusive actions by an adult person against an unrelated adult person with whom the person has had a personal relationship. “Family member” would be defined to mean a spouse, parent, child or person related by blood or adoption to another person (rather than by consanguinity, as under current law). The definition of “health care professional” would reference to the state statutory definition. “Law enforcement agency” would be defined under state law provisions, and would include a tribal law enforcement agency as defined under state law. “Protective order” would mean a temporary restraining order or an injunction issued by a court of competent jurisdiction. Under current law, “domestic abuse” means physical abuse, including a violation of related state law provisions, or a threat of physical abuse by an adult family or adult household member against another family or household member; by an adult person against his or her spouse or former spouse; or by an adult person against a person with whom the person has a child in common.

AB 255/SB 189 would provide an exclusion from voluntary termination of employment ineligibility and requalification provisions if DWD determined that the employee’s spouse changed his or her place of employment to a place to which it was impractical to commute and the employee terminated his or her work to accompany the spouse to that place. The UI reserve fund's balancing account would be charged for benefits paid under this provision

These provisions would first apply to terminations occurring on the first Sunday after publication of the bill.

The compelling family reason exclusions would increase annual UI benefit payments by an estimated $5,108,000. The estimated increase in benefits for each provision would be as follows: (a) domestic abuse -- $108,000 annually; (b) illness / disability of a family member -- $100,000; (c) relocating with spouse -- $4,900,000

*Additional Benefits for Approved Training.* AB 255 / SB 189 includes provisions that would make individuals enrolled in approved training programs eligible for additional UI benefits. Specifically, a claimant who was otherwise eligible for UI benefits and who was currently enrolled in a training program would be eligible, while enrolled in that training program, for additional benefits provided that the claimant:

a. Had exhausted all rights to regular benefits, Wisconsin supplemental benefits, federal emergency unemployment compensation benefits, extended benefits, and benefits under the federal Trade Act of 1974, or any other similar state or federal program of additional benefits.

b. If not in a current benefit year, had a benefit year that ended no earlier than 52 weeks prior to the week for which the claimant first claimed additional UI benefits under these provisions.

c. Was first enrolled in a training program within the claimant's applicable benefit year.

d. Was not receiving similar stipends or other training allowances for nontraining costs.

e. Was separated from employment in a declining occupation or involuntarily separated from employment as a result of a permanent reduction in operations by his or her employing unit, if the separation occurred no earlier than the beginning of the base period for the claimant's applicable benefit year.

f. Was being trained for entry into a high-demand occupation. (The occupations that qualify as declining or high-demand would be determined by DWD.)

The weekly benefit rate payable to a claimant for a week of total unemployment would be an amount equal to the most recent weekly UI benefit rate in the claimant's applicable benefit year. No claimant could receive total benefits greater than 26 times the claimant's weekly benefit rate that applied to the claimant's applicable benefit year. No benefits could be paid to a claimant for weeks beginning more than 52 weeks after the first week for which the claimant received benefits under these provisions. A claimant who was otherwise eligible for benefits while in an approved training program, and whose applicable benefit year ended in a week in which federal emergency unemployment compensation benefits, state supplemental and extended benefits, or another similar state or federal program of additional benefits were payable, would also be eligible for benefits under these provisions if the claimant was first

enrolled in a training program within 52 weeks after the end of the claimant's applicable benefit year. Benefits paid under these provisions would be charged as provided under current law provisions. Current law restrictions on benefits reductions and disqualifications would apply to an eligible claimant in a training program.

Eligible training programs would include state-approved, Workforce Investment Act, and federal Trade Adjustment Assistance Act programs. "Applicable benefit year" would mean, with respect to a claimant, the claimant's current benefit year, if at the time an initial claim for benefits was filed, the claimant had an unexpired benefit year or, in any other case, the claimant's most recent benefit year.

These provisions would first apply with respect to weeks of unemployment beginning on the first Sunday following the 90th day after publication of the bill.

The training provisions would increase annual state UI benefit payments by an estimated $6,200,000. However, while the current federal emergency unemployment compensation and federally funded extended benefit programs are in effect, additional state benefits for approved training may be paid through these programs.

Under current law, the availability for work, suitable work, and work search provisions do not apply to an individual who is enrolled in training approved by the Department. Training that may be approved includes a full-time course of vocational training or basic education which is a prerequisite to such training. In order to remain eligible for benefits, DWD must determine that:

a. The course is expected to increase the individual's opportunity to obtain employment.

b. The training is provided by a Wisconsin Technical College District school or other DWD-approved institution.

c. The individual is enrolled full-time as determined by the training institution.

d. The course does not grant substantial credit leading to a bachelor's or higher degree.

e. The individual is regularly attending and making satisfactory progress in the course. DWD can require the training institution to file a certification showing the individual's attendance and progress.

Benefit disqualification under general qualifying requirements and additional extended benefit qualifying requirements, and disqualification for unavailability for or inability to accept suitable work, or for termination of employment and unavailability for or inability to perform work due to the inability of the employee or health of the employee or a family member, or for failure to accept suitable work from an employer for good cause, cannot be imposed while an individual is enrolled in a course of training or education that meets the requirements for approved training, even if the training does not directly exclude the individual from such

provisions.

DWD cannot reduce benefits under general disqualification availability to work provisions, or deny benefits under general benefit and additional extended benefit eligibility provisions, or for unavailability for or inability to accept suitable work, or for termination of employment and unavailability for or inability to perform work due to the inability of the employee or health of the employee or a family member, or for failure to accept suitable work from an employer for good cause, for individuals enrolled in a program administered by DWD for training unemployed workers that existed on October 1, 2003, other than the youth apprenticeship program, or for a plan for training youth under the federal Workforce Investment Act of 1998, even if the program does not meet the specific statutory requirements for approved training.

Unemployment insurance benefits cannot be denied as a result of an individual leaving unsuitable work to enter or continue training, and the requalifying requirements for voluntary termination of work and suitable work do not apply to individuals enrolled in training programs under the federal Trade Adjustment Assistance Act and dislocated worker training programs under the Workforce Investment Act. Benefits that are paid based on employment where the claimant met general qualifying requirements or on employment terminated to participate in a training program provided by DWD or under the federal Trade Adjustment Assistance and Workforce Investment Acts are charged to the balancing account of the unemployment reserve fund.

[Bill Sections: 44 thru 55, 62, 9356(1)&(2), and 9456(1)]

## 2. UNEMPLOYMENT INSURANCE -- HIGH EXTENDED BENEFITS AND EXTENDED BENEFIT PROGRAM MODIFICATIONS

Currently, individuals can receive up to 72 weeks of unemployment insurance benefits through three programs:

a. *Regular Unemployment Insurance Benefits.* Basic state UI benefits claimed by eligible individuals and funded by employer payments to the UI reserve fund. Claimants can receive up to 26 weeks of benefit payments.

b. *Federal Emergency Unemployment Benefits.* Eligible claimants can receive up to 33 additional weeks of UI benefits in federal emergency unemployment compensation (EUC) paid from the federal Unemployment Trust Fund.

c. *Extended Benefits.* Extended benefits are triggered when certain unemployment rates are reached, and can provide up to 13 weeks of additional benefits to eligible individuals. Typically, extended benefits are 50% state-funded and 50% federal funded. However, under provisions of the American Recovery and Reinvestment Act, extended benefits will be entirely federally-funded through 2010.

AB 255/SB 189 would create a high extended benefit program to correspond with the

period that extended benefits were 100% federally funded, and would modify current state extended benefit provisions to more closely conform with federal extended benefit requirements. Under the bill, for weeks of unemployment beginning on or after February 17, 2009, and ending with the week three weeks prior to the last week in which 100% federal funding of extended benefits was authorized under the ARRA or amendments, there would be a Wisconsin extended benefits "on" indicator if:

a. The average rate of total unemployment, seasonably adjusted, as determined by the U.S. Secretary of Labor, for the most recent three months for which data for all states are published before the close of that week equals or exceeds 6.5%; and

b. The average rate of total unemployment in Wisconsin, seasonally adjusted, as determined by the U.S. Secretary of Labor for the most recent three months for which data for all states are published, before the close of the week equals or exceeds 110% of the average for either, or both, of the corresponding three-month periods ending in the two preceding calendar years.

A "high unemployment" period during which a high unemployment extended benefit period would be in effect would occur if a. and b. above were applied, except the average rate of total unemployment of 8% would be substituted for 6.5% in b. above. In other words a total, seasonally adjusted, unemployment rate of 8% would trigger high unemployment extended benefits. These benefits could only be triggered during the period in which 100% federal funding of extended benefits was provided.

For weeks of unemployment beginning on or after February 17, 2009, and ending before June 1, 2010, or ending before the last week for which 100% federal funding of extended benefits is authorized under ARRA, or amendments, whichever is later, the "eligibility period" of an individual would include the period consisting of each week during which the individual was eligible for federal EUC under the federal law provisions, or any amendments. If that week began during an extended benefit period, or the individual's eligibility for federal EUC ended within an extended benefit period, "eligibility period" would include each week thereafter which began in an extended benefit period. "Eligibility period" of an individual under current law is defined the period consisting of the weeks in the individual’s benefit year which begin in an extended benefit period and, if the individual’s benefit year ends within the extended benefit period, any weeks thereafter which begin in such a period.

The definition of "exhaustee" would be modified to include, for weeks of unemployment beginning after February 17, 2009, and ending before June 1, 2010, or with the last week for which 100% federal funding of extended benefits is authorized, whichever is later, an individual who has exhausted federal emergency unemployment compensation within an extended benefit period that began in a week during or before which the individual has exhausted that emergency unemployment compensation.

The total high extended benefit amount payable to an individual in the benefit year would be the lesser of: (a) 80% of the total amount of regular benefits that were payable to the individual in the individual’s most recent benefit year rounded down to the nearest dollar,

including benefits canceled under discharge for misconduct provisions; or (b) 20 times the individual's weekly benefit amount. State supplemental benefits would have to be subtracted from the total extended benefit amount payable to an individual in his or her benefit year for weeks of unemployment in the individual's benefit year that began prior to the beginning of the extended benefit period that was in effect in the week in which the individual first claims extended benefits. The addition of a high extended benefit program would extend the maximum duration of extended benefits by seven weeks, from 13 to 20 weeks.

AB 255/SB 189 would modify certain current law extended benefits to more closely conform with federal requirements. The current Wisconsin "off" indicator would be repealed. Instead, there would be a Wisconsin "off" indicator for a week if, for the period consisting of that week and the immediately preceding 12 weeks, there was not a Wisconsin "on" indicator. The state "on" indicator would be modified so that it would be in effect when the insured unemployment rate was 6% for 13 weeks, regardless of the rate the prior two years. Technical modifications would also be made to maximum extended benefit provisions.

DWD estimates that the "high extended benefit" provisions could result in an additional $60 to $80 million extended benefits being paid in 2009. However, all benefits would be federally funded.

Under current law, extended benefits are triggered if DWD determines that for the current week and the preceding 12 weeks, the state insured unemployment rate: (a) equals or exceeds 120% of the average of such rates for the corresponding 13-week period during each of the preceding two calendar years and equals or exceeds 5%; or (b) equals or exceeds 6%.

Once extended benefits are triggered, eligible claimants can receive additional benefit payments equal to the lesser of: (a) one-half of their regular benefit payments; or (b) 13 times their weekly benefit rate; or (c) 39 times their weekly benefit rate reduced by the amount of regular benefit payments received. As a result, claimants can receive up to 26 weeks of regular benefit payments and an additional 13 weeks of extended benefit payments. However, extended benefit payments must be reduced by the amount of supplemental benefits received. To be eligible for extended benefits, claimants must have base-period wages equal to 40 times their weekly benefit rate, exhaust all regular benefits, and meet certain work search requirements.

[Bill Sections: 56 thru 61, and 9456(2)]