Legislative Fiscal Bureau

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December 6, 2018

TO: Members
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: December 2018 Extraordinary Session Bills as Passed by the Legislature

Attached are summaries, prepared by this office, of the provisions of the three December 2018 extraordinary session bills as passed by the Legislature.

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Fiscal Effects

Following is an identification of the estimated fiscal effects of the bills as a change to current law. Although some other items of the bills may have a fiscal impact, their effect is indeterminate and will depend upon implementation of the provisions.

2017 Senate Bill 883

1. Income Tax Rate Reduction: reduction of $60 million revenue in 2019-20; increase of $22.5 million to the general fund and decrease of $22.5 million to the budget stabilization fund in 2018-19.

2. Taxation of Pass-Through Entities: minimal revenue increase beginning in 2018-19.

2017 Senate Bill 884

1. Office of the Solicitor General: reduction of $320,000 PR and 4.0 PR positions in 2018-19.

2. Municipal Flood Control Grant Eligibility Extension: allow $14.6 million of 2017-19 authorized stewardship bonding to be used in 2019-21.

2017 Senate Bill 886

1. Fast Forward: potential lapse to the general fund of $20 to $25 million of unencumbered amounts in the workforce training grants and services appropriation in DWD.

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Attachment

Senate Bill 883 as Passed by the Legislature

Taxes

1. Individual Income Tax Rate Reduction Based on Sales Taxes from Out-Of-State Retailers. The bill would make the following changes to current law.

Income Tax Rate Reductions. Modify the current law provision that requires the Department of Revenue (DOR) to reduce individual income tax rates for the tax year that begins in the year following the 12-month period after DOR begins collecting sales and use taxes from out-of-state retailers as a result of a federal law change expanding the state's authority to collect such taxes, as follows.

Specify that the DOR action is triggered by a United States Supreme Court decision expanding the state's sales and use tax authority, rather than any federal law change. Specify that the tax rate reduction is based on sales and use tax revenue reported to, rather than collected by, DOR for the 12-month period beginning on October 1, 2018, and ending on September 30, 2019, as opposed to the 12-month period following the date on which DOR began collecting the additional sales and use tax revenue as the result of a federal law change.

Based on the additional sales and use tax revenue that DOR determines has been collected, specify that the individual income tax rate reduction take effect for the taxable year ending on December 31, 2019 (tax year 2019), as opposed to the tax year following the 12-month period for which the additional sales and use tax is determined. Require the Secretary of DOR to certify and report the additional sales and use tax revenue and income tax rate determinations to the Governor, the Secretary of the Department of Administration (DOA), the Joint Committee on Finance, and the Legislative Audit Bureau no later than October 20, 2019, rather than requiring DOR to make that certification to the Secretary of DOA, the Governor, and the Legislature after DOR makes the tax rate determination.

Rather than requiring the tax rates to take effect in the tax year after DOR makes the certification, specify that the tax rates certified and reported by the DOR Secretary take effect for the taxable year ending on December 31, 2019 (tax year 2019), except as follows. Require the Legislative Audit Bureau (LAB) to review the additional sales and use tax revenue and tax rate determinations certified by the DOR Secretary and report its findings to the Joint Legislative Audit Committee and to the Joint Committee on Finance no later than November 1, 2019. Require the Joint Committee on Finance to determine the tax rates that apply to the taxable year ending on December 31, 2019, if the LAB review of the DOR determinations results in a different calculation of tax rates, and require the Joint Committee on Finance to report its determination to the Governor, the DOA Secretary, and the DOR Secretary no later than November 10, 2019. As a change to current law, these provisions would reduce individual income tax collections by an estimated $60,000,000 in 2019-20.

Under a provision created in 2013 Wisconsin Act 20, state law establishes procedures for reducing individual income tax rates if additional sales and use tax revenues result from any federal law that expands the state's ability to require out-of-state sellers to collect and remit tax on remote sales to Wisconsin residents. On June 21, 2018, a U.S. Supreme Court decision, *South Dakota v. Wayfair, Inc.*, overturned a previous decision and allows states to require out-of-state sellers lacking a physical presence in the state to collect tax on remote sales so long as imposition of the tax meets certain other conditions. In light of the *Wayfair* decision, DOR determined that state law requires the Department to begin collecting tax on remote sales, and as of October 1, 2018, the Department has required remote sellers to collect and remit sales or use tax on sales of taxable products and services in Wisconsin.

If the *Wayfair* decision does trigger the income tax rate reduction under current law provisions, DOR's October 1 imposition of sales and use tax on remote sellers would result in a determination of the tax proceeds from such sales for the 12-month period ending on September 30, 2019. This period is identical to the period for which DOR would determine remote sales under the bill. However, this timetable would result in individual income tax rate reductions in tax year 2020 under current law, as opposed to tax year 2019 under the bill. Therefore, a reduction in individual income tax collections would occur only in 2020-21 under current law, but would occur in both years of the 2019-21 biennium under the bill, resulting in an estimated $60,000,000 reduction in tax collections compared to current law.

At the time of the *Wayfair* decision, additional sales and use tax collections from remote sellers were estimated at $120 million annually. However, the estimated amount of additional tax collections has been reduced to $60 million annually, based on the November 20, 2018, "Estimated GPR Tax Revenues" included in DOA's Agency Budget Requests and Revenue Estimates, FY 2020 FY 2021. The revised estimate is a result of lower observed compliance than originally expected in the first month of collections. However, additional months of collections could lead to further revised estimates. Both under current law and the bill, the tax rate reductions must be in proportion to the share of gross tax attributable to each of the state's four tax brackets.

Economic Nexus Threshold for Sales and Use Tax Collections by Out-of-State Retailers. Under current law, every retailer engaged in business in Wisconsin that makes sales of taxable goods or services that are sourced to this state must collect sales and use tax from their purchases and remit payment to DOR. A retailer is considered to be engaged in business in Wisconsin if it sells tangible personal property or other taxable items or services for storage, use, or consumption in Wisconsin, unless otherwise limited by federal law. The bill would specify that this provision applies to an out-of-state retailer with annual gross taxable and nontaxable sales into Wisconsin that exceed $100,000 in the previous or current year, or to an out-of-state retailer with an annual number of separate sales transactions into Wisconsin that is 200 or more in the previous or current year. The bill would require an out-of-state retailer that meets either of these criteria in the previous year to register with DOR and collect Wisconsin sales and use tax for the entire current year. However, if an out-of-state retailer does not meet either of these criteria in the previous year, the retailer would not be required to register with DOR to collect state sales and use tax until the retailer's sales or transactions meet the above criteria for the current year, at which time, the retailer would have to register with DOR and collect state sales and use tax for the remainder of the current year.

Under the bill, for the provisions described above, a year would be the retailer's taxable year for federal income tax purposes. Additionally, each required periodic payment of a lease or license would be considered a separate sales transaction, but deposits made in advance of a sale would not be considered sales transactions. Further, an out-of-state retailer's annual amounts would include all sales into this state by the retailer on behalf of other persons, as well as all sales into this state by another person on the retailer's behalf.

DOR issued an emergency rule following the *Wayfair* decision to extend economic nexus to certain out-of-state retailers. Beginning October 1, 2018, out-of-state retailers that meet either of the above criteria are required to collect state sales and use tax. The bill would codify the economic nexus threshold provisions described above that are included in DOR's emergency rule for out-of-state retailers that sell taxable products or services into Wisconsin.

Budget Stabilization Fund Calculation. The DOA Secretary would have to exclude all additional revenue deposited in the general fund in the 2018-19 fiscal year that is attributable to an increase in sales and use tax revenues, as certified in the manner described above, as determined by DOR, in calculating the amount transferred to the budget stabilization fund under s. 16.518.

Under current law, one-half of any general fund tax collections that exceed amounts estimated in the biennial budget act are deposited into the budget stabilization fund. Under the bill, amounts collected as certified under the *Wayfair* decision in 2018-19 would be excluded from the determination of the transfer to the stabilization fund.

2. Election of Pass-through Entities to Be Taxed at the Entity Level. Make the following changes to state tax law provisions governing partnerships, limited liability companies (LLCs), and tax-option (S) corporations.

Current Law. In general, a corporation determines state corporate income/franchise tax liability by computing gross or total income, subtracting deductions, apportioning the net income to the state (if necessary), adjusting for nonapportionable income and net operating losses (if applicable), applying the 7.9% state tax rate, and subtracting tax credits. However, many business organizations are not subject to the corporate income/franchise tax. S corporations, partnerships, and LLCs generally compute and pass through income or losses to their shareholders, partners, and members such that their business income is taxed under the individual income tax returns of their respective shareholders, partners, and members. Individual partners, shareholders, and members pay tax under the individual income tax based on graduated rates (from 4.0% to 7.65%) rather than the corporate income/franchise tax rate of 7.9%.

Intent of Pass-through Entity Level Taxation. The bill would allow S corporations, partnerships, and LLCs (collectively referred to as pass-through entities, or "PTE") to elect to be taxed at the entity level, as described below. The bill would clarify that it is intended that for a PTE electing to be taxed at the entity level that its shareholders, partners, and members may not include in their Wisconsin adjusted gross income their proportionate share of all items of income, gain, loss, or deduction of the PTE. Further, the bill would clarify that it is also the intent that the PTE would pay tax on items that would otherwise be taxed if this election was not made.

Election to Be Taxed at the Entity Level. Under the bill, if persons who hold more than 50%

of the shares (or 50% of the capital and profits of a partnership) on the day on which an election is made consent, then a partnership (including other entities treated as a partnership under federal law) or S corporation may elect, on or before the due date or extended due date of its return, to pay tax at the entity level at a rate of 7.9% of net income reportable to this state for the taxable year. Likewise, persons holding more than 50% of the shares (or 50% of the capital and profits of a partnership) may elect, on or before the due date or extended due date of its return, to revoke the election to be taxed at the entity level for the taxable year.

Taxation at Entity Level. If an election to be taxed on the entity level is made, then: (a) the situs of the PTE's income would be determined as if the election had not been made; (b) tax credits could not be claimed by the PTE (except for the credit for taxes paid to another state, as described below); (c) a PTE could not claim a loss (either carried forward or carried back); (d) state income tax laws governing estimated payments and underpayment interest would apply to the PTE for the taxable year beginning in 2019 and later years; (e) the adjusted basis of a partner's interest in the partnership and a shareholder's adjusted basis in the stock and indebtedness of an S corporation would be determined as if an election had not been made; (f) if the PTE fails to pay the amount of taxes owed with respect to income as a result of the election, DOR would collect the amount owed from the shareholders based on their proportionate share of such income. DOR could promulgate rules to implement these provisions.

Credit for Taxes Paid to Another State. The bill would provide that for a PTE electing to be taxed at the entity level, the PTE would be able to credit the net income or franchise tax paid to another state on that income and the net income tax on that income paid by the PTE on behalf of its shareholders, partners, and members that are residents of this state on a composite return filed with the other state against the net income or franchise tax otherwise payable to this state on income of the same year. However, the credit would not be allowed unless the income taxed by the other state is also considered income for Wisconsin tax purposes and is otherwise attributable to amounts that would be reportable to this state by shareholders, partners, or members of the PTE that are residents of this state if the election to be taxed at the entity level, as described above, was not made. The bill would clarify that amounts declared and paid under the income tax law of another state are considered a net income tax paid to that other state only in the year in which the income tax return for that state was required to be filed. Further, the bill would specify that the total amount of the credit could not exceed an amount determined by multiplying 7.9% by the income subject to tax in the other state that is also subject to tax in Wisconsin (similar to current law, this limitation would not apply to income that is taxed by one of the four states that border this state). The bill would also specify that the credit would not be allowed unless claimed within 4 years of the unextended date on which the tax return was due. In addition, the bill would specify that being subject to a completed field or office audit would not prevent a PTE from claiming the credit, as described above.

The bill would prohibit shareholders, partners, and members from claiming the credit for taxes paid to another state by a PTE if that PTE elects to pay tax at the entity level, as described above.

Individual Income tax of Shareholders, Partners, and Members. For purposes of determining the state income tax liability of shareholders, partners, and members, the bill would provide an adjustment to an individual's federal adjusted gross income for any item of income, loss, or deduction passed through from S corporations and partnerships that elect to pay tax at the entity level under the

provisions described above. Further, the bill would provide that shareholders would not have to add back to their federal adjusted gross income their proportionate share of the earnings and profits of an S corporation that has elected to be taxed at the entity level under these provisions.

Withholding Tax. Current law requires a PTE that has Wisconsin income for the taxable year that is allocable to a nonresident partner, member, shareholder, or beneficiary to pay a withholding tax for the privilege of doing business in this state or deriving income from property located in this state. The tax is withheld from the income distributable to each nonresident partner, member, shareholder, or beneficiary in an amount equal to the nonresident partner's, member's, shareholder's, or beneficiary's share of income attributable to this state multiplied by the applicable individual rate. For purposes of determining withholding tax, the bill would not include a nonresident partner's, member's, shareholder's, or beneficiary's share of income from a PTE that is attributable to this state if the PTE elects to be taxed at the entity level.

Initial Applicability. The effective date of the bill would be the date of enactment and all of its provisions would first apply to taxable years beginning on January 1, 2019, except that for S corporations, the provisions would first apply to taxable years beginning on January 1, 2018. Current law provisions related to estimated payments and underpayment interest would not apply to S corporations that elect to pay tax on the entity level for tax year 2018.

Fiscal Impact. The bill is likely to increase state tax collections by an indeterminate, although minimal, amount. The effect is indeterminate because the number of entities opting into the proposed entity level tax treatment is unknown.

Under the bill, the income of pass-through entities that would elect to be taxed at the entity level rate of 7.9% would be taxed at a higher rate than the income of owners of pass-through entities under current law. The income of individual owners of pass-through entities whose pass-through income is taxed under the state individual income tax is taxed either at 4.0%, 5.84%, 6.27%, or 7.65%, depending on the tax bracket in which that income falls. DOR indicates that individuals who report partnership or S corporation income on their federal income tax returns have an effective tax rate under the state individual income tax of 5.9%. Therefore, members of pass-through entities who elect under the bill to be taxed at the entity level would be taxed at a rate that is two percentage points higher, on average, than their current rate of taxation (7.9 - 5.9 = 2.0). Even individuals with pass-through income currently taxed at the state's highest marginal tax rate would be taxed at a higher rate (7.90 - 7.65 = 0.25).

While this analysis implies that individuals are unlikely to choose to pay higher state taxes, the election to be taxed at the entity level for state tax purposes could result in reductions in pass-through owners' federal income tax liabilities that offset their increase in state taxes. Beginning in tax year 2018, the federal Tax Cuts and Jobs Act limits the federal income tax itemized deduction for state and local taxes to no more than $10,000 per year. Under current law, pass-through income of individuals is subject to state income tax, and the resulting tax is subject to the deduction limit for federal tax purposes. Under the bill, pass-through income could be taxed at the entity level for state tax purposes, which may be a deductible business expense for federal tax purposes. As a result, pass-through entity owners may be able to continue deducting state taxes on pass-through income without limitation for federal income tax purposes, subject to approval by the Internal Revenue Service.

The tax advantage of the federal deduction would depend on a pass-through entity owner's marginal tax rate, as well as whether, or not, the owner has reached the maximum state and local tax deduction. The Tax Cuts and Jobs Act set federal tax rates for tax years 2018 through 2025 at 10%, 12%, 22%, 24%, 32%, 35%, and 37%. To the extent that pass-through entities are able to quantify these tax consequences, pass-through entities may determine that the federal tax advantage offsets the higher state tax. The federal $10,000 deduction limitation on state and local taxes was enacted on a temporary basis and applies for tax years 2018 through 2025.

Transportation

1. Limitation on the Use of Federal Funds on State Highway Project Types. For those projects on which the Department expends federal moneys, require DOT to expend federal moneys on not less than 70% of the aggregate project components eligible for federal funding each fiscal year for the following project types: (a) southeast Wisconsin freeway megaprojects; (b) major highway development projects; and (c) state highway rehabilitation (SHR) projects with a total cost of less than $10 million. This provision would limit the use of federal funds for these project types to not less than 70% of the aggregate federally eligible project components.

Specify that if the Department determines that it cannot meet this requirement or if it could make more effective and efficient use of federal moneys, DOT would be able to submit a proposed alternate funding plan to the Joint Committee on Finance. Provide that if the Co-Chairs of the Committee do not notify the Department within 14 working days after the date of DOT's submittal that the Committee has scheduled a meeting for the purpose of reviewing the proposed plan, the Department would be able to expend moneys as proposed in the plan. Specify that if within 14 working days after the date of the submittal, the Co-Chairs of the Committee notify the Department that the Committee has scheduled a meeting for the purpose of reviewing the proposed plan, DOT would be able to expend moneys as proposed in the plan only upon approval of the Committee.

Specify that these provisions first apply to, and take effect on, projects let and aid disbursed on July 1, 2019.

The above provisions would require that when state highway construction projects in each of the three main state highway improvement programs use any federal moneys, DOT would be required to fund at least 70% of the aggregate, eligible, project component expenditures with federal moneys in each fiscal year or seek an exemption from the Joint Committee on Finance. The provision would require the expenditure of larger amounts of federal aid on a smaller number of highway projects each year. As a result, the provision would limit the number of projects subject to federal requirements associated with the use of federal highway aid (such as federal prevailing wage or environmental requirements).

Under the bill, if federal funding would be required to be drawn to certain projects by the proposed limitation, state funding would have to be spent on both the required match for those federally funded projects and non-federally eligible costs on those projects, as well as for those projects that would be entirely state-funded. This could limit the Department's ability to fund projects

using only state moneys in a given year. Likewise projects within the affected programs that would otherwise be eligible for some federal funding may not be able to be funded if federal funding is not sufficient to meet the required 70% limitation for those projects.

Near the end of each federal fiscal year, DOT is eligible to receive possible redistribution of federal highway aid if the Department can demonstrate that it would be able to commit these additional funds as well as its existing aid allocation by the end of that year. Typically, the state has received $30 million to $40 million in federal redistribution aid. Given the limitation the bill provision would place on the use of federal aid within the state highway program, it could limit number of projects eligible to use federal aid, which could impact the Department's ability to demonstrate that it could commit its existing federal aid and any federal redistribution aid each year.

However, the bill would allow DOT to submit a plan to the Joint Committee on Finance in order to expend federal funds on federally aidable project components for affected projects at rate that is less than 70%, which could alleviate any concerns related fully expending federal funds under the provision. In addition, because higher-cost (above $10 million) state highway rehabilitation projects would not be subject to this threshold, DOT may, in some years, be able to use such project costs to assist in obligating any remaining federal aid amounts.

2. DOT Oversight of Local Projects. Require DOT to notify the political subdivision of whether the aid provided to each subdivision includes federal moneys and which project components must be paid for with federal moneys, if any.

Provide that for any local project meeting both of the following criteria, DOT could not require a local government to comply with any portion of the Department's facilities development manual other than design standards: (a) the project proposal is reviewed and approved by a professional engineer or by the highway commissioner for the county in which the project will be located; and (b) the project is conducted by a political subdivision with no expenditure of federal money.

Provide that any local project funded in whole or in part with state funds under the surface transportation urban and rural programs, or under the local bridge program, would be required to be let through competitive bidding and by contract to the lowest responsible bidder, as provided for in state law related to bidding and contracting for highway construction.

Define a local bridge as a bridge that is not on the state trunk highway system or on marked routes of the state trunk highway system designated as connecting highways. Define local roads as streets under the authority of cities or villages, county trunk highways, or town roads. Specify that political subdivision would mean a county, city, village, or town. Define a project as the development, construction, repair, or improvement of a local road or a local bridge.

Specify that these provisions first apply to, and take effect on, projects let and aid disbursed on July 1, 2019.

Currently the facilities development manual contains 27 chapters, two of which appear to relate specifically to project design. However, design standards is not a defined term under the bill. Other chapters could include design standards. The manual covers other topics and related standards that may no longer be required under the provision of political subdivisions (local government

projects) receiving only state aid. These topics and related standards include project management, agency coordination, surveying and mapping, hazardous materials investigation, pavements, drainage, and cultural resource preservation, among others.

3. Repeal of 2017 Act 59 Authority to Transfer Funds Among Highway Program Appropriations. Effective July 1, 2019, repeal the Department of Transportation's authority to transfer federal and state funds between state highway program components and a related appropriation. The Governor's partial veto of 2017 Act 59 provided DOT the authority to transfer these funds without legislative oversight.

Senate Bill 884 as Passed by the Legislature

Administration

1. Approval Process for Capitol Security Changes. Require the Department of Administration to submit any proposed changes to security at the Capitol, including the posting of a firearm restriction, to the Joint Committee on Legislative Organization for approval under a 14-day passive review process. If the Co-Chairs of the Committee do not notify the Department within 14 working days after the submittal of the proposal that the Committee has scheduled a meeting for the purpose of reviewing the proposal, the Department may implement the proposed changes. If, within 14 working days after the submittal, the Co-Chairs of the Committee notify the Department that the Committee has scheduled a meeting for the purpose of reviewing the proposal, the Department may only implement the plan upon approval by the Committee. Specify that the Department may take any action related to security at the Capitol that is necessary to prevent or mitigate imminent danger, subject to later review if the Co-Chairs of the Committee determine review is necessary.

Under current law, the Department may appoint police officers to safeguard all public property placed by law in the Department's charge, including the Capitol. The Governor or the Department may, to the extent it is necessary, authorize police officers employed by the Department to safeguard state officers, state employees, or other persons. Also under current law, an individual carrying a firearm who enters or remains in a building that is owned, occupied, or controlled by the state is subject to a Class B forfeiture if the state has notified an individual not to enter or remain in the building while carrying a firearm or with that type of firearm.

2. Annual Report for Self-Funded Portal. Require DOA to submit to the Joint Committee on Finance and the Legislature an annual report on the administration of the information technology and communication services self-funded portal. Specify that the annual report: (a) be submitted by October 1 of each year for the fiscal year that ended immediately preceding the date of the report; (b) include a financial statement of the state's self-funded portal revenues and expenditures for the fiscal year; (c) list the services available through the portal, identifying the addition of services available since the previous fiscal year; (d) indicate the amounts of any fees charged for each of the services; and (e) summarize the activity levels of the services provided. The Department may include any other information it determines is relevant to the administration of the self-funded portal. This provision was included in the 2017-19 biennial budget, as passed by the Legislature, and was vetoed by the Governor.

Administrative Rules

1. Deference by Courts to Agency Interpretation of Law, Notice Requirements, and Guidance Documents. Create provisions related to deference by courts to agency interpretations of law, notice and comment requirements for guidance documents issued by agencies, and agency rule-making authority.

a. Deference. Prohibit a court from according deference to agency interpretations of law in certain proceedings and prohibit agencies from seeking deference in any proceeding to agency interpretations of law.

b. Guidance Documents. Establish various requirements with respect to the adoption and use of guidance documents by agencies, including requirements that agencies must comply with in order to adopt guidance documents. This provision would not apply to the Board of Regents of the University of Wisconsin System, the Technical College System Board and the Department of Employee Trust Funds.

i. Define "guidance document" as any formal or official document or communication issued by an agency, including a manual, handbook, directive, or informational bulletin, that: (a) explains the agency's implementation of a statute or rule enforced or administered by the agency, including the current or proposed operating procedure of the agency; or (b) provides guidance or advice with respect to how the agency is likely to apply any statute or rule enforced or administered by the agency, if that guidance or advice is likely to apply to a class of persons similarly affected.

ii. The definition of a guidance document excludes: (a) a promulgated or a proposed rule; (b) a standard adopted, or a statement of policy or interpretation made in the decision of a contested case, in a Department of Revenue private letter ruling, or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts; (c) any document or activity excluded from the definition of a rule, except that "guidance document" includes a pamphlet or other explanatory material described that otherwise satisfies the definition of "guidance document"; (d) any document that any statute specifically provides is not required to be promulgated as a rule; (e) declaratory ruling regarding an administrative action; (f) pleading or brief filed in court by the state, an agency, or an agency official; (g) a letter or written legal advice of the Department of Justice or a formal or informal opinion of the Attorney General; (h) any document or communication for which a procedure for public input is provided by law; and (i) any document or communication that is not subject to the right of inspection and copying under.

iii. Require the Legislative Reference Bureau to perform duties prescribed by statute related to guidance documents, including publishing notices of public comment periods on proposed guidance documents.

iv. Require each agency to submit each proposed guidance document to the Legislative Reference Bureau for publication in the register and to provide a period for persons to submit written comments to the agency on the proposed guidance document. The agency must retain all written comments submitted during the public comment period and consider those comments in determining whether to adopt the guidance document as originally proposed, modify the proposed guidance document, or take any other action.

v. Allow for a comment period of less than 21 days with the approval of the Governor.

vi. Require each adopted guidance document, while valid, to remain available on the agency's Internet site and require the agency to permit continuing public comment on the guidance document. Each guidance document must be signed by the head of the agency below a statement containing certain certifications.

vii. Provide that a guidance document does not have the force of law and does not provide the authority for implementing or enforcing a standard, requirement, or threshold, including as a term or condition of any license. An agency that proposes to rely on a guidance document to the detriment of a person in any proceeding would afford the person an adequate opportunity to contest the legality or wisdom of a position taken in the guidance document, and an agency may not use a guidance document to foreclose consideration of any issue raised in the guidance document.

viii. Require an agency to provide a reasonable explanation for proceeding at variance with a guidance document. Allow certain persons to petition an agency to promulgate a rule in place of a guidance document, and make guidance documents subject to the same judicial review provisions as apply to rules.

ix. Require the Legislative Council staff to provide agencies with assistance in determining whether documents and communications are guidance documents.

x. Provide that, as of six months after the bill's effective date, any guidance document that does not comply with the requirements in the bill is considered to be rescinded.

2. Rule-Making Authority for Federal Compliance Plans and Settlement Agreements. Provide that a plan that is submitted to the federal government for the purpose of complying with a requirement of federal law does not confer rule-making authority and cannot be used by an agency as authority to promulgate rules. Further, provide that no agency may agree to promulgate a rule as a component of a compliance plan unless the agency has explicit statutory authority to promulgate the rule at the time the compliance plan is submitted.

Provide that a settlement agreement, consent decree, or court order does not confer rule-making authority and cannot be used by an agency as authority to promulgate rules. Provide that no agency may agree to promulgate a rule as a term in any settlement agreement, consent decree, or stipulated order of a court unless the agency has explicit statutory authority to promulgate the rule at the time the settlement agreement, consent decree, or stipulated order of a court is executed.

3. Advisory Committees and Informal Consultations. Whenever an agency appoints an advisory committee with respect to contemplated rule making, require that the agency submit a list of the members of the committee to the Joint Committee for review of Administrative Rules.

4. Joint Committee on Administrative Rules Suspension of Rules. Provide that the Joint Committee on Administrative Rules (JCRAR) may suspend a rule multiple times.

Under current law, administrative rules that are in effect may be temporarily suspended by JCRAR. If JCRAR suspends a rule, JCRAR must introduce bills in each house of the Legislature to make the suspension permanent. If neither bill to support the suspension is ultimately enacted, the

rule may remain in effect and JCRAR may not suspend the rule again.

Elections Commission

1. In-Person Application Dates, Times, and Locations for Absentee Ballots. Modify the dates during which a qualified elector may apply for an absentee ballot in-person such that applications may be made no earlier than 14 days preceding the election and no later than the Sunday preceding the election (a duration of 13 voting days). Delete statutory restrictions related to the days of the week and the time of day during which a qualified elector may apply for an absentee ballot in-person. Specify that a municipal clerk or a board of election commissioners may offer more than one in-person absentee alternate voting location. Under the bill, a municipality could establish in-person absentee voting hours from Sunday to Saturday without limitation on time of day.

Currently under statute, applications may be received Monday to Friday between the hours of 8 a.m. and 7 p.m. Further, statute specifies that a qualified elector may apply for an absentee ballot in-person no earlier than the third Monday preceding the election and no later than the Friday preceding the election (a duration of 10 voting days). Statute also specifies that a municipality may designate one site other than the office of the municipal clerk or board of election commissioners (an alternate site) as the location for conducting in-person absentee voting. It should be noted that in *One Wisconsin Institute v. Thomsen*, the U.S. District Court for the Western District of Wisconsin ruled that the state-imposed limits on dates, days, and times for in-person absentee voting are unconstitutional, with the exception of the prohibition applicable to the Monday before Election Day. The decision also determined that the restriction limiting municipalities to one location for in-person absentee voting is unconstitutional.

2. Voting Procedures for Military and Overseas Electors. Modify current law so that an individual signing the witness certification for an absentee ballot cast by a military elector or overseas elector need not be a United States citizen. Provide that all overseas electors may receive absentee ballots electronically, regardless of whether such electors are considered permanently or temporarily overseas. The bill would modify current law so that it complies with the federal Uniformed and Overseas Citizens Absentee Voting Act. This bill provision is identical to 2017 Assembly Bill 947, as introduced.

Senate Confirmation

1. Advice and Consent of the Senate for Appointments. Require that any individual nominated by the Governor or another state officer or agency, and with the advice and consent of the Senate appointed, to any office or position may not hold the office or position, be nominated again for the office or position, or perform any duties of the office or position during the legislative session biennium if the individual's confirmation for the office or position is rejected by the Senate.

Agency General Provisions

1. Agency Publications. Require a state agency (a board, commission, committee, department or officer in the state government, except the Governor, a District Attorney or a military or judicial officer) to provide a federal or state statutory or administrative rule citation for any statement or interpretation of law that the agency makes in any publication, whether in print or on the agency's website, including guidance documents, forms, pamphlets, or other informational materials 60 days after the effective date. The provision would take effect on the first day of the seventh month beginning after publication. This provision would not apply to the Board of Regents of the University of Wisconsin System, the Technical College System Board and the Department of Employee Trust Funds.

Corrections

1. Pardon and Release Report. Require the Department of Corrections, at the request of the Legislature, to post on its website and submit to the Chief Clerk of each house of the Legislature a report regarding individuals who, since the previous report was submitted or during a date range specified in the request, were pardoned or released from prison without completing the imprisonment portion of their sentence. The report must identify the individual's name, the crime for which he or she was convicted, and the name of the person who pardoned the individual or authorized the release of the individual before the individual completed his or her sentence. In addition, if an individual appears on a report required under the provision is convicted of a crime, the report must identify the individual's name and the crime. "Completing his or her sentence" is not defined in the provision or under current law.

Justice

1. Attorney General Notification to Legislature, Right to Intervene and Depositing of Settlement Monies. Modify provisions related to notice to the Legislature of claims relating to constitutionality or enforceability of statutes and right of the Legislature to intervene, and state settlement moneys and the settlement authority of the Attorney General.

a. *Notice to Legislature of Claims Relating to Constitutionality of Statutes.* Require a party that alleges in state or federal court that a statute is unconstitutional, in violation of or preempted by federal law, or if the construction or validity of a statute is otherwise challenged, to serve the Speaker of the Assembly, the President of the Senate, and the Senate Majority Leader with a copy of the proceeding. Also require that, in such cases, the Assembly, the Senate, and the Joint Committee on Legislative Organization (JCLO) have the right to be heard, representing the Assembly, Senate, or Legislature. It should be noted that the state may have a limited ability to create a right in federal

court.

Under current law, if a statute, ordinance, or franchise is alleged to be unconstitutional, the Attorney General must be served with a copy of the proceeding and be entitled to be heard. This requirement exists in the statutes for declaratory judgment acts under s. 806.04 (11). According to Legislative Reference Bureau (LRB), the Wisconsin Supreme Court, in *Kurtz v. City of Waukesha*, 91 Wis. 2d 103, 280 N.W.2d 757 (1979), has also extended the requirement to other types of actions involving claims that a statute is unconstitutional. According to the LRB, this provision would incorporate the *Kurtz* rule into the statutes and extends both the current statutory and *Kurtz* requirements of service and an opportunity to be heard to the Legislature when a statute is alleged to be unconstitutional or in violation of or preempted by federal law.

b. Legislative Intervention. Provide that when a party challenges in state or federal court the constitutionality of a statute, facially or as applied, challenges a statute as violating or preempted by federal law, or if the construction or validity of a statute is otherwise challenged, as part of a claim or affirmative defense, the Assembly, the Senate, and JCLO have the right to intervene and participate in the action and may also retain legal counsel other than the Department of Justice (DOJ).

Allow the following committees to intervene in the action, as well as obtain legal counsel, at any time: (a) Committee on Assembly Organization on behalf of the Assembly; (b) the Committee on Senate Organization on behalf of the Senate; and (c) JCLO on behalf of the Legislature. This provision does not necessarily give a right to intervene in federal court, that decision would remain with the federal court.

Specify that the Assembly, Senate, and JCLO may intervene in any litigation pending in state or federal court on the effective date of the bill.

c. State Settlement Moneys. Require that DOJ must deposit all settlement funds into the general fund. Further, lapse all unencumbered settlement funds that are currently in the DOJ appropriation into the general fund. As a result, in order for monies to be appropriated as directed by the court or settlement agreement, the Legislature would need to enact legislation.

Under current law, DOJ deposits settlement funds that are not committed under the terms of the settlement into a DOJ appropriation and may spend the funds only after submitting a plan for the expenditure to the Joint Committee on Finance for passive review. If the Committee does not schedule a meeting to review the proposed plan within 14 days, DOJ may expend the funds as provided in the plan.

d. Settlement Authority of Attorney General. Require an intervenor appointed by the Assembly, Senate, or JCLO, or if there is no intervenor, the Joint Committee on Finance to approve the compromise or discontinuance of a civil action prosecuted by the state instead of the Governor. Further, remove the ability of an officer, department, board, or commission to direct that an action be comprised or discontinued. Further, provide that the Attorney General may not submit a proposed settlement plan to the Committee in which the plan concedes the unconstitutionality or other invalidity of a statute or concedes that a statute violates or is preempted by federal law without the approval of JCLO.

Current law allows the Attorney General to compromise or discontinue an action DOJ is prosecuting if the Governor approves the compromise or discontinuance. Current law allows the Attorney General to settle and compromise actions in which the Attorney General is appearing for and defending the state as the Attorney General determines to be in the best interest of the state.

Require that, in defending an action, if an action is for injunctive relief or there is a proposed consent decree, the Attorney General must receive the approval of an intervenor, or if there is no intervenor, submit the settlement or compromise plan to the Joint Committee on Finance for passive review. If the Committee does not schedule a meeting to review the plan within 14 days, the Attorney General may proceed, but, if the Committee does schedule a meeting, the Attorney General may proceed only with the approval of the Committee. Further, provide that the Attorney General may not submit a proposed settlement plan to the Committee in which the plan concedes the unconstitutionality or other invalidity of a statute or concedes that a statute violates or is preempted by federal law without the approval of JCLO.

2. Office of the Solicitor General. Eliminate the Office of the Solicitor General in the Department of Justice (DOJ). Eliminate the Solicitor General position (1.0 PR position in DOJ). In addition, eliminate the unclassified Deputy Solicitor Generals under DOJ (3.0 PR positions). Reduce funding for DOJ's PR investigation and prosecution appropriation by $320,000 PR in 2018-19, associated with six months of salaries and fringe benefits for the 4.0 positions. The position eliminations would be effective January 1, 2019.

3. Gifts and Grants Appropriations. Convert the Department of Justice gifts and grants appropriations under law enforcement and administrative service programs from continuing appropriations to annual, all monies received appropriations.

Legislature

1. Retention of Legal Representation for Legislators, Legislative Staff and the Legislature. Authorize the appointment of legal counsel other than from the Department of Justice (DOJ) for legislators or legislative staff if the acts or allegations underlying the action are arguably within the scope of the legislator's or employee's duties as follows:

a. For the Assembly, the Speaker of the Assembly may authorize a Representative or Assembly employee who requires legal representation to obtain legal counsel with the cost of representation paid from the Assembly's appropriation. Specify that the Speaker approve all financial costs and terms of representation.

b. For the Senate, the Senate Majority Leader may authorize a Senator or Senate employee who requires legal representation to obtain legal counsel with the cost of representation paid from the Senate's appropriation. Specify that the Senate Majority Leader approve all financial costs and terms of representation.

c. For an employee of a legislative service agency, the Co-Chairs of the Joint Committee on Legislative Organization (JCLO) may authorize an employee of a legislative service agency who requires legal representation to obtain legal counsel with the cost of representation paid from the Assembly's or Senate's appropriations, as determined by the Co-Chairs. Specify that the Co-Chairs approve all financial costs and terms of representation.

Further, authorize the Assembly, Senate, or JCLO on behalf of the Legislature, to obtain legal counsel other than from DOJ, in any action in which these bodies are a party or in which the interests of these bodies are affected, as follows:

a. For the Assembly, the Speaker of the Assembly may obtain legal counsel with the cost of representation paid from the Assembly's appropriation in any action in which the Assembly is a party or in which the interests of the Assembly are affected, as determined by the Speaker. Specify that the Speaker approve all financial costs and terms of representation.

b. For the Senate, the Senate Majority Leader may obtain legal counsel with the cost of representation paid from the Senate's appropriation in any action in which the Senate is a party or in which the interests of the Senate are affected, as determined by the Senate Majority Leader. Specify that the Senate Majority Leader approve all financial costs and terms of representation.

c. For the Legislature, the Co-Chairs of JCLO may obtain legal counsel with the cost of representation paid from the Assembly's or Senate's appropriations as determined by the Co-Chairs, in any action in which the Legislature is a party or in which the interests of the Legislature are affected. Specify that the Co-Chairs approve all financial costs and terms of representation.

Under current law, Representatives to the Assembly and Senators, as well as legislative employees, may receive legal representation from DOJ in most legal proceedings. Assembly and Senate policies and practices also allow legislators and legislative employees to retain outside legal counsel in some instances.

2. Authority Regarding Leases for Legislative Space. Specify that the Co-Chairs of the Joint Committee on Legislative Organization (JCLO) lease or acquire office space for legislative offices or legislative service agencies. Delete the current law provision that the Department of Administration leases or acquires office space for legislative offices or legislative service agencies at the direction of JCLO.

Natural Resources

1. Municipal Flood Control Grant Eligibility Extension. Extend, through the 2019-21 biennium, the authorization for the Department of Natural Resources (DNR) to award a grant that supports a flood control project by the U.S. Army Corps of Engineers. 2017 Act 59, the biennial budget act, authorized DNR to award up to $14.6 million during the 2017-19 biennium if an applicant were to use the award to match federal funds dedicated to a project funded or executed by the U.S. Army Corps of Engineers under the federal Flood Control Act. The grant award would be supported

by unobligated general fund-supported bonding authority under the Knowles-Nelson Stewardship program from one or more of the 2014-15, 2015-16, or 2016-17 fiscal years.

It is anticipated the City of Arcadia in Trempealeau County would be the only eligible grant recipient under this authorization. With regards to the pending project in Arcadia, DNR reports the Corps is in planning stages of the project, and will not be ready to consider awarding a grant prior to 2020, after the expiration of existing DNR authority during the 2017-19 biennium. This amendment would enable DNR to award the grant in the 2019-21 biennium, consistent with the current Corps timeline. Under this provision, no additional bonding authority is authorized and no eligibility or other requirements related to the grant have been modified.

Veterans Affairs

1. Notification Requirement for Transfers of State Veterans Homes Revenue to the Veterans Trust Fund. Require the Department of Veterans Affairs to notify the Joint Committee on Finance of any transfer of funds from the operation of the state veterans homes to the veterans trust fund. Under current law, the Department of Veterans Affairs may make transfers from unencumbered balance of the PR appropriations for the state veterans homes to the veterans trust fund without legislative approval and without providing notice to the Legislature. Under this authority, DVA has made such transfers to in each fiscal year since 2015-16 ($12.0 million in 2015-16, $9.0 million in 2016-17, $12.5 million in 2017-18, and $14.5 million in 2018-19).

Wisconsin Economic Development Corporation

1. Passive Review Requirement for Enterprise Zones. Require approval by the Joint Committee on Finance, subject to 14-day passive review, before the Wisconsin Economic Development Corporation (WEDC) could designate a new enterprise zone under the enterprise zone tax credit program. Before WEDC could designate a new enterprise zone, WEDC would first be required to notify the Committee, in writing, of its intent to designate a new enterprise zone. The notice would need to describe the new zone and the purpose for which WEDC proposes to designate the new zone. The bill would also eliminate the current law limit on the number of zones WEDC may designate.

Under current law, WEDC is authorized to designate up to 30 zones without review by any standing committee of the Legislature. Currently, WEDC has entered into contracts designating 26 active enterprise zones in the state. If an existing enterprise zone designation expires or WEDC revokes the designation of a zone, WEDC may designate a new zone without violating the 30 zone limit. Under the bill, current law provisions limiting the number of zones to 30 and permitting WEDC to redesignate zones would be deleted. However, no zone could be designated absent approval by the Joint Committee on Finance.

2. Modifications to WEDC Board. Specify several changes to the appointment procedures, composition, and powers of the WEDC Board of Directors (Board), as described below.

Composition of WEDC Board. Under current law, WEDC has a 14-member Board, of which 12 are voting members. The Board includes six members nominated by the Governor who are appointed with the advice and consent of the Senate to serve at the pleasure of the Governor and serve staggered four-year terms. The Board also includes three members appointed by the Assembly Speaker and three members appointed by the Senate Majority Leader, each consisting of one majority member, one minority member, and one person employed in the private sector, each of whom serve at the pleasure of the Assembly Speaker and Senate Majority Leader, respectively. The Secretary of the Department of Administration (DOA) and the Secretary of the Department of Revenue (DOR) serve as nonvoting members of the Board. The Board must elect a Co-Chairs from among its non-legislative members.

The bill would change the composition of the Board, such that the Assembly Speaker and the Senate Majority Leader would each appoint four individuals to staggered four-year terms. The Assembly Minority Leader and the Senate Minority Leader would each appoint one member to serve a four-year term. The legislative appointees could be legislators or private citizens; however, neither the Assembly Speaker nor the Senate Majority Leader would be able to appoint more than two members of the Legislature to the Board. The Governor would continue to appoint six members to the Board, with the advice and consent of the Senate. As a result, there would be 16 voting members of the Board (rather than 12). A vacancy on the Board would be filled in the same manner as the original appointment to the Board, for the remainder of the unexpired term.

The initial Board members appointed under the bill would be appointed to terms expiring as follows: (a) two of the members appointed by the Assembly Speaker and two of the members appointed by the Senate Majority Leader would expire on October 1, 2020; and (b) two of the members appointed by the Assembly Speaker, two of the members appointed by the Senate Majority Leader, and the members appointed by the Assembly Minority Leader and the Senate Minority Leader would expire on October 1, 2022.

Notwithstanding the above provisions, the Board would temporarily include one additional member appointed by the Assembly Speaker and one additional member appointed by the Senate Majority Leader, to serve terms expiring on September 1, 2019.

The current members of the Board serving at the pleasure of the Assembly Speaker and the Senate Majority Leader on the day before the effective date of the bill would continue to serve at pleasure pending the appointment of new Board members, but could not serve after January 6, 2019, unless newly appointed in the manner described above.

Appointment of WEDC Chief Executive Officer (CEO). Specify that the CEO would be appointed by the Board, instead of by the Governor. However, specify that this provision would not apply after September 1, 2019. As a result, consistent with current law, the CEO would be appointed by, and serve at the pleasure of, the Governor after September 1, 2019.

Supervision of Economic Development Liaison Position. Specify that the Board would have the power to appoint and supervise the economic development liaison position that serves as the

state's primary point of contact for any matters regarding the electronic and information technology manufacturing (EITM) zone tax credit program under 2017 Act 58 (Foxconn). Under Act 58, 1.0 unclassified GPR project position was provided to DOA's supervision and management general program operations appropriation for economic development liaison activities under an agreement with WEDC through December 31, 2022. Under the bill, that position would be appointed and supervised by the WEDC Board, rather than DOA.

3. Reporting and Information Verification Requirements for Tax Credit Programs. Current law requires WEDC to annually verify information submitted by tax credit recipients before it verifies a person as eligible to claim a tax credit. This includes information submitted to the Department of Revenue for the economic development tax credit program and information submitted to WEDC for the jobs, business development, development zone, enterprise zone, and the EITM zone tax credit programs. The bill would remove these verification requirements. Instead, WEDC would be required to annually and independently verify, from a sample of tax credits, the accuracy of the information required to be reported by recipients. Further, each recipient would be required to submit a statement to WEDC signed by the recipient, or the director or principal officer of the recipient, attesting to the accuracy and truthfulness of the information provided to it.

Identification for Voting Purposes

1. Requirements Related to Identification for Voting Purposes. Modify the list of identification that may be used for voting purposes to include an unexpired identification card issued by a technical college in the state that is a member of and governed by the technical college system. Specify that the current law requirements for valid university identification cards for voting purposes would apply. Under current law, such valid identification cards must contain the date of issuance and signature of the individual to whom it is issued and contain an expiration date indicating that the card expires no later than two years after the date of issuance if the individual establishes that he or she is enrolled as a student at the university or college on the date that the card is presented.

The following provisions would set in statute the Department of Transportation (DOT) administrative rules (with minor modifications to reflect drafting conventions) associated with the issuance of identification cards and receipts for voting purposes and the related petition process when the required documentation is unavailable. The provisions could expand the definition of proof of citizenship compared to DOT's rule for the existing petition process when an applicant is unable to provide the proof of name and date of birth required to obtain a voter identification card. Under current DOT rule, proof of citizenship for the petition process is limited to those documents that prove one is a citizen. The provision would incorporate legal permanent resident, conditional resident, or legal presence status into statute, which are currently included in rule for non-voting state identification card purposes. As a result, under the proposed modification, proof of citizenship could include documents that demonstrate lawful presence in the United States.

a. Voter Identification Card Petition Process. Specify that when any applicant who requests an identification card to be provided without charge for voting is unable to provide proof of

name and date of birth, and the documents are unavailable to that person, the applicant may make a written petition to the Division of Motor Vehicle's (DMV) administrator for an exception to the related, required documentation. Specify that this petition must include proof of identity and all of the following: (a) a certification of the person's name, date of birth, and current residence street address on the Department's form; (b) an explanation of the circumstances by which the person is unable to provide proof of name and date of birth; and (c) whatever documentation is available that states the person's name and date of birth. Specify that this process could occur in lieu of the current law requirements for providing proof of identify, date of birth, social security status, and address. Define unavailable to mean the applicant does not have the document and would be required to pay a government agency to obtain it.

Provide that if a person applies for and requests an identification card without charge for voting purposes and the person's proof of name and date of birth, or of proof of citizenship, legal permanent resident status, conditional resident status, or legal presence is unavailable, the person may make a written petition to the Department for an exception to the requirement for which proof is unavailable. Specify that the Department provide appropriate translation for any person who is unable to read or understand the petition process instructions and related communications associated with the voter identification card application process. Require that this petition include the person's statement under oath or affirmation of all of the following: (a) that the person is unable to provide proof of name and date of birth or proof of citizenship, legal permanent resident status, conditional resident status, or legal presence; (b) the documents providing any such proof are unavailable to the person; (c) the applicant's name, date of birth, place of birth, and such other birth record information requested by the Department, or the person's alien or U.S. citizenship and immigration service number, or U.S. citizenship certificate number.

b. Verification of Records. Upon receiving a petition that meets the requirements of the identification card process described above, require the Department to forward the petition to DMV's central office for processing. Require the Department to provide the person's birth record information to: (a) the Department of Health Services (DHS), for the sole purpose of verification by DHS of the person's birth certificate information or the equivalent document from another jurisdiction, other than a province of Canada; or (b) to a federal agency for the sole purpose of verifying the person's certificate of birth abroad issued by the federal Department of State, or for verifying the person's alien or U.S. citizenship and immigration service number, or U.S. citizenship certificate number. In such instances, require DOT to open a file containing the petition and shall create therein a report with a dated record of events, including all communication to or with the applicant.

c. Investigation and Processing of Petition Applications. Provide that DOT may not complete the processing of an application under the petition process prior to receiving verification of the applicant's birth certificate information. Specify that if the Department does not receive verification within 30 days or receives notice that the birth information provided in the application does not match that of the birth record custodian, the Department would be required to promptly notify the person in writing of that failure to verify and request the person contact the Department within 10 days. If the person does not respond to such an inquiry within 10 days, require the Department to send the person a second letter with substantially similar contents. Specify that if the person does not respond to the second letter within 10 days and DOT knows the person's telephone number, the Department would be required to: (a) call the person on the telephone; (b) notify the

person that the birth information was not verified; and (c) request the person provide additional information within 10 days.

Specify that if 30 days have elapsed since the date of the first letter sent without contact from the person, DOT must suspend the investigation and send written notice containing the following: (a) that the person has not responded; (b) that the Department has no further leads with which to locate or obtain secondary documentation or verification of birth information; (c) that the Department has suspended its investigation or research until such time as the person contacts the Department; and (d) that if within 180 days after the date of the written notice the person fails to contact DOT the petition will be denied and no further identification card receipts will be issued. Specify that if the person fails to contact the Department within 180 days after the Department suspends the investigation, the Department would be required to deny the petition in writing and inform the person that the Department will resume the investigation if the person contacts the Department to discuss the petition.

Require that whenever an applicant contacts the Department to discuss the petition, the investigation would begin anew, notwithstanding any prior denial due to the person's failure to timely respond. Specify that the applicant would be required to act in good faith and use reasonable efforts to provide additional information that could reasonably lead DOT to discover correct birth information or secondary documentation to assist the Department in processing the application. Require DOT to investigate the petition and any additional information provided as part of this investigation with prompt and due diligence and to use reasonable efforts to locate and obtain the secondary documentation by pursuing leads provided by the person. Specify that such investigations may only be completed within the DMV central office by employees whose regular job duties include investigation and fraud detection and prevention. Provide that if the investigation discovers new or corrected birth information, DOT would be required to resubmit the new or corrected birth information to the DHS for verification. Require DOT to pay any actual, necessary fees required by the record custodian to obtain the secondary documentation.

d. Other Means of Birth Record Verification. Specify that if DHS does not verify the birth record information within 30 days, DOT may issue an identification card to the person only if it receives the necessary verification, if the person provides proof of name and date of birth or proof of citizenship, legal permanent resident status, conditional resident status or legal presence, or if DOT receives other secondary documentation acceptable to the administrator and deemed sufficient. Provide that this secondary documentation may include the following: (a) a baptismal certificate; (b) hospital birth certificate; (c) a delayed birth certificate; (d) a census record; (e) an early school record; (f) a family bible record; (g) a doctor's record of post-natal care; or (h) other documentation deemed acceptable to the administrator, within his or her reasonable discretion.

e. Citizenship or Lawful Presence Documentation. Specify that proof of citizenship, legal permanent resident status, conditional resident status, or legal presence would mean any of the following: (a) a U.S. state or local government issued certificate of birth; (b) a valid U.S. passport; (c) a valid foreign passport with appropriate immigration documents, which shall include or be accompanied by federal form I-94, arrival and departure record; (d) a certificate of U.S. citizenship; (e) a U.S. Certificate of naturalization; (f) a valid Department of Homeland Security/U.S. Citizenship and Immigration Services federal form I-551, resident alien registration receipt card issued since

1997; (g) a valid Department of Homeland Security/U.S. Citizenship and Immigration Services federal form I-688, temporary resident identification card; (h) a valid Department of Homeland Security/U.S. Citizenship and Immigration Services federal form I-688B or I-766, employment authorization document; (i) a valid Department of Homeland Security/U.S. Citizenship and Immigration Services federal form I-571, refugee travel document services federal form I-688B or I-766, employment authorization document; (j) Department of Homeland Security/U.S. Citizenship and Immigration Services federal form I-797, notice of action; (k) a Department of Homeland Security/Transportation Security Administration transportation worker identification credential; (l) a U.S. State Department reception and placement program assurance form (refugee version), that includes or is accompanied by federal form I-94, arrival and departure record; and (m) certain documentary proof required under current law related to driver licensure, that is approved by the appropriate federal authority.

f. Proof of Identity. Specify that proof of identity would mean a supporting document identifying the person by name and bearing the person's signature, a reproduction of the person's signature, or a photograph of the person. Provide that acceptable supporting documents would include: (a) a valid operator's license, including a license from another jurisdiction, except a province of Canada, bearing a photograph of the person; (b) military discharge papers; (c) a U.S. government and military dependent identification card; (d) a valid photo identification card issued by Wisconsin or another jurisdiction, except a province of Canada, bearing a photograph of the person; (e) a marriage certificate or certified copy of judgment of divorce; (f) a social security card issued by the Social Security Administration; (g) any document allowed to demonstrate proof of citizenship, legal permanent resident status, conditional resident status or legal presence, if it bears a photograph of the person and was not used as proof of name and date of birth; and (h) Department of Homeland Security/Transportation Security Administration transportation worker identification credential.

g. Proof of Name and Date of Birth. Specify that proof of name and date of birth would mean any of the following: (a) for a person born in Wisconsin, a copy of the person's Wisconsin birth certificate issued and certified in accordance with state law; (b) for a person born in another jurisdiction, other than a province of Canada, a certified birth certificate copy or the equivalent document from that other jurisdiction or a certificate of birth abroad issued by the State Department; (c) a U.S. passport; (d) a valid, unexpired passport issued by a foreign country with a federal I-551 resident alien registration receipt card or a federal I-94 arrival and departure record that bears a photograph of the person and identifies the person's first and last names, and the person's day, month, and year of birth; (e) a Wisconsin operator's license bearing a photograph of the person; (f) a Wisconsin-issued identification card, bearing a photograph of the person, other than an identification card receipt issued under the voter identification card petition process; (g) a federal I-551 permanent resident alien registration receipt card; and (h) a U.S. certificate of naturalization; (i) a certificate of U.S. citizenship; (j) a federal temporary resident card or employment authorization card, I-688, I-688A, I-688B, and I-766; (k) a Native American identification card that is issued by a federally recognized tribe or a band of a federally recognized tribe, is issued in Wisconsin, includes a photograph and signature or reproduction of a signature of the person, and has been approved by the secretary for use as identification; (l) a court order under seal related to the adoption or divorce of the individual or to a name or gender change that includes the person's current full legal name, date of birth, and, in the case of a name change or divorce order, the person's prior name; (m) an Armed Forces of the U.S. common access card or DD Form 2 identification card issued to military

personnel; and (n) a Department of Homeland Security/Transportation Security Administration transportation worker identification credential.

In addition, specify that proof of name and date of birth could include a federal I-94 parole edition or refugees version arrival-departure record, together with a certification, on the Department's form, of the person's name and date of birth, a copy of a federal Department of state refugee data center reception and placement program assurance form and a letter from the person's sponsoring agency on its letterhead, supporting the person's application for a Wisconsin identification card or operator's license and confirming the person's identification Specify that applicants who are unable to provide a reception and placement program assurance form may be issued a Wisconsin identification card or operator's license, but only after their identification has been confirmed by the U.S. Citizenship and Immigration services.

h. Other Provisions Related to Investigation of Petitions. Provide that the DMV administrator may delegate to the deputy administrator or to a bureau director, whose regular responsibilities include driver licensing and identification card issuance, the authority to accept or reject such extraordinary proof of name, date of birth, or U.S. citizenship. Provide that the denial of a written petition submitted to the Department through the petition process would be subject to administrative judicial review. Specify that if the DMV Administrator, or their delegate, determines that an applicant has knowingly made a false statement or knowingly concealed a material fact or otherwise committed a fraud in an application, petition, or additional information, DOT would be required to immediately suspend the investigation and notify the person in writing of the suspension and the reason for the suspension, and refer any suspected fraud to law enforcement.

i. Revival of Petition Process. Provide that a person whose petition is suspended or denied due to a failure to respond in a timely manner may revive the petition at any time by contacting the Department to discuss the petition application. Require that if a person revives a petition, DOT would have to immediately issue, and continue to reissue, an identification card receipt to the person in accordance with the newly created statutory criteria for identification card receipt issuance. However, require that the Department first require the person to take a photograph if required by statute. Require DOT to grant a petition if the Department concludes, on the basis of secondary documentation or other corroborating information, that it is more likely than not that the name, date of birth, and U.S. citizenship provided in the application is correct.

j. Issuance and Use of Identification Card for Voting Purposes Receipt. Require the Department to issue a receipt at no charge to any applicant applying for an identification card for voting purposes, such that this receipt would constitute a temporary identification card while the application is being processed. Specify that this receipt would be valid for a period not to exceed 60 days and would be required to be marked in accordance with federal law.

Specify that if the Department issues a receipt to an applicant petitioning the Department due to the unavailability of the documentation required for identification card issuance, DOT would have to do all of the following: (a) issue the receipt not later than the sixth working day after the person made the petition and shall deliver the receipt by first class mail, except that if a petition is filed or revived within seven days before or two days after a statewide election the Department shall issue a receipt not later than 24 hours after the petition is filed or revived and shall deliver the receipt

by overnight or next-day mail; (b) issue a new receipt to the person not later than 10 days before the expiration date of the prior receipt, and having a date of issuance that is the same as the expiration date of the prior receipt; (c) continue to reissue identification card receipts to a person unless DOT lawfully cancels the identification card receipt, upon the issuance of an operator's license or identification card to the person, or upon the person's request, or upon the denial of the application, or upon return to the Department of a receipt as nondeliverable, or upon the person's failure to contact the Department to discuss the petition for a period of 180 days or more, or whenever DOT receives information that prohibits issuance of an identification card. DOT would be required to have the person take a photograph prior to reissuing an identification card receipt if the photograph of the person on file with the Department is eight or more years old. Require DOT to issue a replacement identification card receipt under this process upon the request of the person to whom it is issued if the receipt is lost or destroyed.

Specify that an identification card receipt would constitute a temporary identification card while the application is being processed under the petition process and shall be valid for a period not to exceed 60 days. Require DOT to clearly mark the receipt “FOR VOTING PURPOSES ONLY," as validated for use for the purposes of voting. Provide that a receipt would have to contain the same information specified driver licenses, including: (a) the date of issuance; (b) the expiration date; (c) the name and signature of the person to whom it was issued; and (d) except for those with a sincerely held religious belief against being photographed, a photograph of the individual to whom it was issued, and may contain such further information as the Department deems necessary.

Require DOT to cancel or refuse to issue a voter identification card receipt, as currently allowed for state non-voter identification cards, as follows: (a) upon identification card cancelation; (b) upon the issuance of an operator's license or identification card to the person; (c) upon the person's request; (d) upon the denial of the application; (e) upon return to DOT of a receipt as nondeliverable; or (f) whenever the Department receives information that prohibits issuance of the identification card. Specify that DOT would not be able to issue a receipt to a person after the denial of a petition unless the person revives an investigation.

Require that whenever any person, after receiving the identification card receipt, moves from the address named in the application or is notified by the local authorities or by the postal authorities that the address so named has been changed, the person would have to notify DOT of his or her change of address within 30 days. Specify that upon receiving a notice of change of address, DOT would be required to promptly issue a new receipt under the receipt process showing the correct address and having the expiration date of the prior receipt.

k. Voter and Non-Voter Identification Card Content and Design. Specify that DOT may issue an identification card bearing a name other than the name that appears on a supporting document if the person provides evidence acceptable to the Department that the person has used the name in a manner that qualifies the name as being legally changed under the common law of Wisconsin, including evidence of the person's prior name, changed name, the length of time the person has consistently and continuously used the changed name, an affirmation that the person no longer uses the prior name, and an affirmation that the person did not change his or her name for a dishonest or fraudulent purpose or to the injury of any other person. Specify that in such cases, DOT Department shall mark an identification card as is required of REAL ID non-compliant driver

licenses.

Specify that DOT would be required to approve a name change requested by a person who cannot provide supporting documentation of a lawful change of name but who does one of the following: (a) provides proof of identity in the new name, and the Department receives from the federal Social Security Administration evidence or confirmation of the name change; or (b) applies for an identification card and provides an affidavit declaring all facts required under for identification card issuance to prove a name change under the common law of Wisconsin.

In addition, for voter identification cards issued through the petition process, the card would be required, in addition to any other required legend or design, to be of the design specified for state driver licenses and include a marking similar or identical to the marking necessary for REAL ID non-compliant driver licenses.

Senate Bill 886 as Passed by the Legislature

Children and Families

1. Temporary Assistance For Needy Families -- Funding Adjustments. Modify provisions relating to funding adjustments for programs supported by the federal temporary assistance for needy families (TANF) block grant as follows.

Reallocation of TANF Funds among Programs. Repeal the authority of the Secretary of the Department of Administration (DOA) to approve requests from the Department of Children and Families (DCF) to reallocate funding between TANF-funded programs from the allocation amounts specified in the statutory TANF schedule.

Instead, prohibit the DCF from reallocating funds between TANF-funded programs unless DCF first notifies the Joint Committee on Finance (JFC) in writing of the proposed reallocation and the Co-Chairs of the Committee do not notify DCF within 14 working days after the date of the DCF notification that the JFC has scheduled a meeting to review the proposed reallocation. However, provide that if, within 14 working days after the DCF notification, the Co-Chairs notify DCF that JFC has scheduled a meeting to review the proposed reallocation, DCF may make the proposed reallocation only upon approval by JFC.

TANF Reduction Plan. Provide that, if the amounts budgeted from federal TANF funds exceed the TANF block grant amount the state receives, DCF must submit a plan to the JFC for reducing the allocated funding amounts for approval under a 14-day passive review process. However, provide that if, within 14 working day after the date DCF submits the plan the Committee has scheduled a meeting to review the proposed reduction plan, DCF may only allocate the moneys specified in the budget reduction plan only upon approval of JFC. Under current law, a budget reduction plan is submitted to the DOA Secretary and may be implemented with the Secretary's approval.

Health Services

1. DHS Waivers of Federal Law, Pilot Programs, and Demonstration Projects

Provide the Legislature and the Joint Committee on Finance new authority with respect to requests from the Department of Health Services' (DHS) relating to waivers of federal law, federal pilot programs, and federal demonstration projects, as described below.

Require Legislative Authorization for Federal Waivers, Pilot Programs, and Demonstration Projects. Prohibit DHS from submitting a request to a federal agency for a waiver or a renewal,

modification, withdrawal, suspension, or termination of a waiver of federal law or rules, or for authorization to implement a pilot program or demonstration project (hereafter, a "request") unless legislation has been enacted specifically directing the submission of the request.

In addition, provide that, if a submission to a federal agency of a request for a waiver or renewal, modification, withdrawal, suspension, or termination of a waiver of federal law or rules or for authorization to implement a pilot program or demonstration project is required in legislation enacted on or after January 1, 2011, the following procedures would apply.

Requests Not Yet Submitted to Federal Agencies. If DHS has not yet submitted a request, require the Department to submit to the Joint Committee on Finance ("the Committee") an implementation plan describing the Department's plan for submitting the request, including an expected timeline for submitting the request in which the submission date is no later than 90 days after the submission of the implementation plan. Specify that these provisions would apply beginning 60 days after the enactment of legislation requiring the request, or March 1, 2019, whichever is later.

If the Department is unable to submit the request by the date specified in the implementation plan, permit the Department to request an extension of up to 90 days in a written submission that includes a report on the progress toward submission of the request and the reason an extension is needed from the Committee. Provide that if the Co-Chairs of the Committee do not notify the Department within 14 working days after the date of the request for an extension, the extension is considered granted. However, if, within 14 working days after the date of the request for an extension the Co-Chairs notify the Department that the Committee has scheduled a meeting for the purpose of reviewing the extension request, the Department may consider the extension granted only upon approval of the Committee. Limit the number of 90-day extensions that may be granted under these provisions to three.

Provide that when the Department has finalized its proposed request before submitting the request to the federal agency, require DHS to submit the proposed request to the Committee for approval by the Committee. Provide that the Department may submit the proposed request to the appropriate federal agency only upon approval by the Committee, and that the procedures under s. 13.10 of the statutes do not apply to these approval procedures.

Pending Requests. In cases where the Department has submitted a request to a federal agency, but the request has not been denied or approved by the federal agency, require the Department to do all of the following.

(a) Contact the federal agency at least biweekly to obtain a progress report on approval of the request.

(b) Beginning 30 days after the date of submission of the request to the federal agency, or March 1, 2019, whichever is later, and monthly thereafter, submit to the Committee a progress report on negotiations with the federal agency toward approval of the request, including a written description of any portion of the request that the federal agency has stated will not be approved.

(c) Beginning 90 days after the date of the submission of the request to the federal agency, or March 1, 2019, whichever is later, and quarterly thereafter, make available to the Committee a

representative of the Department to brief the Committee or provide testimony at a hearing at the Committee's request. Require the agency to ensure that at least one representative of the agency appearing in person before the Committee has sufficient personal knowledge of the negotiations and progress toward approval of the request to respond to inquiries and requests for information by the Committee.

Provide that, before the federal agency grants final approval of the request, the Department submit the proposed approval, as negotiated with the federal agency, to the Committee for approval or disapproval. Provide that the Committee may approve or disapprove, but not modify, the proposed approval as negotiated with the federal agency. Specify that the Department may agree to final approval of the request only upon approval by the Committee. Provide that if the Committee disapproves the request, the Department must withdraw the request or renegotiate the request with the federal agency and resubmit the proposed approval as renegotiated to the Committee for approval or disapproval. Specify that the procedures under s. 13.10 of the statutes do not apply to these provisions.

Requests that are Federally Approved, but Not Fully Implemented. If a request has been approved in whole or in part, but not fully implemented by the Department, require the Department to do the following:

(a) Beginning 60 days after the approval date of any portion of the request by the applicable federal agency, or March 1, 2019, whichever is later, submit to the Committee an implementation plan for the approved portions of the request, including the expected timeline for final implementation of the request in accordance with the federal agency's approval. Provide that when the Department submits an implementation plan that it considers its final implementation plan, the Department would be prohibited from implementing the approved portions of the request until the Committee approves the final implementation plan. Provide that the procedures under s. 13.10 of the statutes do not apply to these provisions.

(b) Beginning 30 days after the date of submission of the implementation plan, and monthly thereafter, submit to the Committee a progress report on implementation of the approved portions of the request.

(c) Beginning 90 days after the date of the approval of any portion of the request by the federal agency, and quarterly thereafter, make available to the Committee a representative of the Department to brief the Committee or provide testimony at a hearing at the Committee's request. Require the Department to ensure that at least one representative of the Department appearing before the Committee has sufficient personal knowledge of the negotiations and progress toward implementation of the approved request to respond to inquiries and requests for information by the Committee.

Requests for Renewals of Federal Waivers, Pilot Programs, and Demonstration Projects. Within nine months before the expiration of an approved waiver of federal law, pilot program or demonstration project for which no legislation has been enacted specifying that the waiver, program, or project must be suspended or terminated, require the Department to submit a written notice to the Committee of the expiration date and Department's intent regarding the renewal. Provide that if the

Department intends to request substantive changes to the waiver, program, or project in its request to the federal agency, DHS must submit a proposed renewal request under the new procedures created in the bill. Provide that if the Department intends to renew the waiver, program, or project without substantive changes, before submitting the renewal request to the federal agency, the Department must submit the renewal request to the Committee for its approval under a 14-day passive review process. Provide that, if within 14 working days after the submission to the Committee, the Co-Chairs notify DHS that the Committee has scheduled a meeting for the purpose of reviewing the proposed renewal request, the Department may only submit the proposed renewal request upon approval by the Committee. Provide that, after reviewing the proposed renewal request and determining whether any changes requested are substantive, the Co-Chairs may require the Department to comply with the new procedures that apply to DHS requests to federal agencies. Specify that the procedures under s. 13.10 of the statutes do not apply to these provisions.

Delegation to Standing Committees. Permit the Committee Co-Chairs to delegate to a standing committee of the Legislature of appropriate subject matter jurisdiction any of the responsibilities of the Committee described above. In such cases, require the Committee Co-Chairs to specify the terms of a delegation under this provision, and determine what constitutes an approval under such a delegation.

Committee Authority to Reduce Agency Funding and Modify Agency Full-Time Positions, Based on Non-Compliance. Provide that if the Committee determines that the Department has not made sufficient progress in submitting a request, negotiating with the federal agency, or implementing an approved portion of a request, or is not acting in accordance with the enacted legislation requiring the submission of the request, the Committee may reduce from moneys allocated for state operations or administrative functions the Department's appropriation or expenditure authority, whichever is applicable, or change the authorized level of full-time equivalent positions for the Department related to the program for which the request is required to be submitted. Provide that the procedures under s. 13.10 of the statutes do not apply to this provision.

2. Joint Finance Committee Review and Approval of Medical Assistance State Plan Amendments and Provider Payment Changes. Prohibit DHS from submitting any medical assistance (MA) state plan amendment to the federal Department of Health and Human Services, Center for Medicaid and Medicare Services (CMS), or implement a change to the reimbursement rate for, or make a supplemental payment to, a provider under the MA program, without first submitting the proposed amendment, rate change, or payment to the Joint Committee on Finance (JCF) for review and approval under the 14-day passive review process if the estimated fiscal effect of the proposed plan amendment, rate change, or payment is greater than $7,500,000 from all revenue sources in the 12-month period following its implementation date.

Specify that this requirement does not apply to a reimbursement rate or supplemental payment change if explicit expenditure authority or funding for the specific change is included in enacted legislation. The requirement would apply to a state plan amendment not involving a payment change regardless of whether the state plan amendment is authorized by enacted legislation.

The MA state plan is the recognized statement describing the nature and scope of Wisconsin's Medicaid program, as required under federal law. The state plan: (a) provides assurances that a state

will abide by federal rules as a condition of claiming federal matching funds; (b) indicates which optional groups, services, or programs the state has chosen to cover or implement; and (c) describes the state-specific standards to determine eligibility, reimbursement methods for providers, and processes the state uses to administer the program.

The initial state plan was developed when the MA program was created. All subsequent changes to the program must be submitted to CMS in the form of state plan amendments. Proposed changes may only take effect upon approval of the amendment by CMS. State plan amendments may take effect retroactively to the first day of the quarter in which the state submitted the amendment. For example, DHS has typically submitted its annual updated state plan relating to methods of reimbursing nursing homes on, or shortly before, September 31 so that the changes first take effect for services provided on July 1, the beginning of the state fiscal year.

Under current law, DHS is required to notify the Joint Committee on Finance of any changes the Department has implemented to the MA program, including any amendments to the MA state plan, as part of its quarterly report on the status of the program. The quarterly reports indicate that, from July 1, 2017 through September 30, 2018, DHS had submitted the following 14 proposed state plan amendments to CMS for approval:

- Reimbursement for targeted case management services for high-cost children with medical complexity
- Reimbursement for state prison inmate inpatient hospital stays
- Reimbursement for personal care services
- Reimbursement for federally qualified health centers
- Reimbursement for skilled nursing facilities
- Termination of access payments for ambulatory surgical centers
- Cost of living adjustments for eligibility determinations
- Inpatient hospital rates
- Outpatient hospital rates
- Mandatory managed care enrollment for SSI-eligible recipients
- Foster care youth
- Outpatient hospital services
- Home health services
- Children's health insurance plan
- Nursing home rates

3. Drug Screening, Testing, and Treatment for Able-Bodied Adults Participating in the FoodShare Employment and Training (FSET) Program. Repeal the current statutes relating to drug screening, testing, and treatment for able-bodied adults participating in the FSET program and incorporate the provisions of DHS 38 of the Wisconsin Administrative Code into the statutes in place of the current statutes that direct DHS to promulgate rules relating drug screening, testing and treatment for able-bodied adults participating in FSET.

Repeal Current Statutory Provisions. Repeal the current statutes that direct DHS to promulgate rules to develop and implement a drug screening, testing, and treatment policy to screen and, if indicated, test and treat participants in FSET who are able-bodied adults for use of a controlled substance without a valid prescription for the controlled substance. Repeal the elements that must be

included in rules promulgated by DHS for this purpose.

Definitions. Incorporate into statute definitions for the following terms, which are currently defined in chapter DHS 38 of the Wisconsin Administrative Code: able-bodied adult, administering agency, confirmation test, controlled substance, employment and training program, food stamp program, medical review officer, metabolite, prescription, qualified drug testing vendor, screening, specimen, trauma-informed, treatment, treatment program, and treatment provider.

Notice of Requirement. Require that the administering agency provide information explaining the requirement for FSET participants who are able-bodied adults without dependents (ABAWDs) to undergo screening, testing, and treatment for abuse of controlled substances, to any individual who expresses interest in, or is referred to participate in FSET. Require that the format of the information provided by the administering agency be approved by DHS.

Drug Screening Questionnaire. Require the administering agency, at the time of application and at the annual redetermination for eligibility for FoodShare, to administer a controlled substance abuse screening questionnaire to any able-bodied adult subject to the ABAWD work requirement, who intends to meet the able-bodied adult work requirement through FSET. Specify that the controlled substance abuse screening questionnaire must be approved by DHS and may include questions related to controlled substance abuse-related criminal background activities and controlled substance abuse. Require that the administering agency determine whether answers to the controlled substance abuse screening questionnaire indicate possible use of a controlled substance without a valid prescription by the able-bodied adult.

Require that an able-bodied adult who is administered a controlled substance abuse screening questionnaire must answer all questions on the screening questionnaire, sign and date the questionnaire, and submit the questionnaire to the administering agency. Require that an able-bodied adult who indicates prescribed use of a controlled substance on their screening questionnaire, provide evidence of the valid prescription to the administering agency. Specify that an able-bodied adult who is administered a controlled substance abuse screening questionnaire but who fails to meet the requirements in this paragraph is not eligible to participate in FSET and may not be referred to participate in FSET by the administering agency. However, an able-bodied adult who is denied FSET eligibility for failure to meet the requirements in this paragraph may complete the requirements in this paragraph at any time while eligible for FoodShare.

Specify that an able-bodied adult whose answers to the screening questionnaire do not indicate possible substance abuse of a controlled substance has satisfied the requirements of this provision for purposes of participating in FSET.

Drug Testing. Require the administering agency to require any able-bodied adult whose answers on the controlled substance abuse screening questionnaire indicate possible use of a controlled substance without a prescription to undergo a test for the use of a controlled substance. Prohibit the administering agency from requiring an able-bodied adult who indicates a readiness to enter treatment for controlled substance abuse to undergo a test for the use of a controlled substance, regardless of the indication of possible use of a controlled substance without a prescription on the controlled substance abuse screening questionnaire.

Consistent with guidelines from the federal Department of Health and Human Services, specify that a test for the use of a controlled substance consists of laboratory analysis of a specimen collected in a manner specified by DHS from an able-bodied adult by a qualified drug testing vendor or a provider approved by DHS. Require the qualified drug testing vendor or other provider to analyze the specimen for the presence of controlled substances specified by DHS.

Subject to DHS approval, permit the administering agency to contract with a trauma-informed qualified drug testing vendor to collect a specimen, carry out laboratory analysis of the specimen, store the specimen for confirmatory testing if required, complete confirmatory testing, provide review by a medical review officer, and document and report test results to the administering agency. Permit DHS to require the use of a specific testing service procured through state contracting if DHS determines that volume discounts or other preferential pricing terms can be achieved through a statewide contract.

Specify that an able-bodied adult who is required to undergo a test for the use of a controlled substance but refuses is ineligible to participate in FSET until the individual agrees to be tested for the use of a controlled substance and the test results have been reported. Define refusal to submit to a drug test as failing or refusing to: (a) appear for a scheduled drug test without good cause; (b) complete a form or release of information required for testing, including those required by the drug testing vendor that permit the drug testing vendor to report test results to the administering agency or DHS; (c) provide a valid specimen for testing; or (d) provide verification of identity to the testing vendor. Allow the administering agency to direct an able-bodied adult who has refused to submit to a test and subsequently agrees to submit to a test to undergo drug testing on a random basis at any time within 10 business days after the individual agrees to submit to a test.

Require the drug testing vendor to perform a confirmation test if an able-bodied adult tests positive for the use of a controlled substance. Require that the confirmation test is conducted using the same specimen obtained for the initial drug test. Require the drug testing vendor's medical review officer, who is responsible for determining the presence of a controlled substance, to interpret all test results that are not negative.

Permit the administering agency to use results of a drug test performed: (a) by the administering agency for the purpose of eligibility for another state program; (b) at the request of the Department of Corrections; (c) or by other drug testing providers as approved by DHS, to determine whether to refer an able-bodied adult to treatment. Permit the administering agency to only use the results of drug tests that meet all of the following requirements: (a) the test results are provided directly to the administering agency; (b) the test results include tests for all controlled substances required by DHS to be tested; and (c) the test occurred within 90 days before the results are provided to the administering agency.

Specify that an able-bodied adult who tests negative for use of a controlled substance or who tests positive for use of a controlled substance but provides the administering agency a prescription for each controlled substance for which the individual tested positive, is not prohibited from participating in FSET.

Specify that an able-bodied adult who tests positive for use of a controlled substance, and does not provide evidence of a prescription for the controlled substance as determined by the qualified

drug testing vendor's medical review officer, is required to participate in treatment to participate in FSET.

Drug Treatment. Require participation in trauma-informed treatment to participate in FSET for able-bodied adults: who test positive for use of a controlled substance, and do not provide evidence of a prescription for the controlled substance as determined by the qualified drug testing vendor's medical review officer; or who indicate a readiness to enter treatment for controlled substance abuse without a test for the use of a controlled substance, regardless of the indication of possible use of a controlled substance without a prescription on the controlled substance abuse screening questionnaire.

Require the administering agency to provide every able-bodied adult who is required to participate in treatment under this provision with information about treatment programs and county-specific assessment and enrollment activities for entry into treatment. Require the administering agency to monitor the able-bodied adult's progress in entering and completing treatment and the results of random testing for the use of a controlled substance carried out during and at the conclusion of treatment.

Specify that a treatment provider must conduct a trauma-informed substance abuse evaluation and assessment of each able-bodied adult and take any of the following actions, as appropriate, based on the evaluation and assessment: (a) if a treatment provider determines an individual does not need substance abuse treatment, the provider must notify the administering agency of its determination; (b) if a treatment provider determines an individual is in need of substance abuse treatment, the provider must refer the individual to an appropriate treatment program to begin treatment and shall notify the administering agency of the referral, the expected start date, and duration of treatment; or (c) if a treatment provider determines an individual is in need of treatment but is unable to refer the individual because there is a waiting list for enrollment in appropriate treatment programs, the provider must notify the administering agency when the individual is expected to be enrolled.

Specify that an able-bodied adult is not prohibited from participating in FSET, under these provisions, if a treatment provider determines that the individual does not need substance abuse treatment and the provider notifies the administering agency of its determination. Provide that an able-bodied adult who is on a waiting list for enrollment in an appropriate treatment program must continue to take all necessary steps towards enrollment in the appropriate treatment program. Specify that an able-bodied adult is not prohibited from participating in FSET, under this provision, while on the waiting list, if the individual is not eligible for immediate enrollment in another appropriate treatment program.

Require an administering agency to accept current participation in any treatment program to satisfy the requirements of this section. Require the individual participating in another program to execute a release of information to allow the administering agency to obtain verification of successful participation in that treatment program.

Specify that an able-bodied adult who is required to participate in treatment for the use of a controlled substance but refuses is ineligible to participate in FSET until the individual agrees to participate in treatment. Define refusal to participate in treatment as failing or refusing to: (a) complete a form or releases required for treatment program administration, including those required

by the treatment provider in order to share information with the administering agency about the individual's participation in treatment; (b) participate in a controlled substance test required by the treatment provider or the administering agency during the course of required treatment, including random controlled substance testing directed by the treatment provider or administering agency; (c) meet attendance or participation requirements established by the treatment provider; or (d) complete a substance abuse assessment. Specify that an able-bodied adult who fails to meet one of the requirements listed in (a) to (d) is still eligible for FoodShare, while being ineligible for participation in FSET.

Provide that an able-bodied adult subject to these provisions will be considered to be successfully completing treatment if all applicable components of the evaluation and assessment are met.

Specify that an able-bodied adult who is participating in FSET is exempt from complying with requirements to work a specified number of hours, as outlined in state law, while participating in treatment.

Individuals Not Subject to the Requirement. Specify that an ABAWD who: (a) completes or voluntarily withdraws from FSET; (b) is terminated from FSET for a reason not related to this provision; or (c) is no longer subject to the ABAWD work requirements, is not subject to the drug screening, testing, or treatment requirements specified in this provision.

Confidentiality of Records and Appeals. Prohibit the disclosure of completed screening questionnaires, prescriptions, testing results, and treatment records relating to this provision, except for purposes connected with the administration of FSET or when otherwise authorized by law or written consent from the subject of the record. Permit DHS to establish administrative, physical, and technical safeguard procedures that the administering agencies must follow to assure compliance with state and federal laws relating to public assistance program records, drug testing and treatment records, and medical records.

Permit an individual to appeal an adverse decision in compliance with the fair hearing procedures authorized by federal rule and following the procedures established in state administrative rules promulgated by the Division of Hearings and Appeals.

Payment. Require that DHS pay for all costs related to screening able-bodied adults for the use of a controlled substance without a valid prescription, under this provision, including the costs of producing, administering, and reviewing the screening questionnaires.

Require that DHS pay for all costs relating to testing able-bodied adults for the use of a controlled substance without a valid prescription, under this provision, including the costs related to contracting with qualified drug testing vendors.

Require that DHS pay for all costs, not covered by Medicaid or other private insurance, relating to treating able-bodied adults for the use of a controlled substance without a valid prescription, under this provision. Require that payments by DHS for this purpose not exceed the rates paid by Medicaid for comparable services.

Effective Date. Require DHS to implement the substance abuse screening, testing, and treatment requirements under this provision no later than October 1, 2019. Provide that, prior to implementation, these provisions would be subject to the Joint Finance review provisions, described under "Health Services, Item #1," as though the provisions described above were a request approved on the effective date of the bill.

4. Implementation of Childless Adult Demonstration Waiver. Codify in state statute provisions of a federal Medicaid demonstration waiver approved by the federal Centers for Medicare and Medicaid Services (CMS) on October 31, 2018, as that waiver relates specifically to MA beneficiaries enrolled as childless adults, as described below.

Require DHS, beginning as soon as practicable after October 31, 2018 (except as otherwise noted), and ending no sooner than December 31, 2023, to implement the following waiver provisions:

Community Engagement. Require childless adults, with certain exemptions, who are at least 19 years of age but have not attained the age of 50, to participate in, document, and report 80 hours per calendar month of community engagement activities. Specify that the Department, after finding good cause, may grant a temporary exemption from this requirement upon request of a MA recipient. Require DHS to disenroll a person for six months any individual who is required to participate in community engagement but who does not participate for 48 aggregate months in a community engagement activity. Specify that the 48-month eligibility period begins no sooner than October 31, 2019, for current MA recipients and no sooner than the first month when eligibility of a recipient has been established, if all beneficiaries who will be subject to the community engagement requirement have been adequately notified.

Specify that a community engagement activity includes any of the following: (a) work in exchange for money, goods, or services; (b) unpaid work, such as volunteer work or community service; (c) self-employment; or (d) participation in a work, job training, or job search program, as approved by DHS, including the FoodShare employment and training program, the Wisconsin Works program, programs under the federal workforce innovation and opportunity act, and tribal work programs.

Specify that individuals are exempt from the community engagement requirements if they are: (a) receiving temporary or permanent disability benefits from the federal or state government or a private source; (b) determined by DHS to be physically or mentally unable to work; (c) verified as unable to work is a statement from a social worker or other health care professional; (d) experiencing chronic homelessness; (e) serving as the primary caregiver for a person who cannot care for himself or herself; (f) receiving or applying for unemployment compensation and complying with the work requirements for unemployment compensation; (g) participating regularly in an alcohol or other drug abuse treatment or rehabilitation program, except for alcoholics anonymous or narcotics anonymous, but including cultural interventions specific to American Indian tribes or bands; (h) attending high school at least half time or enrolled in an institution of higher education, including vocational programs or high school equivalency programs, at least half time; or (i) exempt from work requirements under FoodShare.

Monthly Premiums. Require childless adults with incomes of at least 50% of the federal

poverty line to pay a monthly premium. Establish the monthly premium at $8, except that the Department would be required to reduce this amount by up to half for a MA recipient who does not engage in certain behaviors that increase health risks or who attests to actively monitoring unhealthy behaviors. Require DHS to disenroll for six months any individual who does not pay a required premium, except specify that disenrollment may occur only at annual eligibility redetermination after providing notice and reasonable opportunity for the person to pay. Specify that a person may reenroll in MA if he or she pays all owed premiums or becomes exempt from payment of premiums. Specify that a person who is eligible to receive an item or service furnished by an Indian health care provider is exempt from the premium requirement.

Health Risk Assessments. Require childless adults to complete a health risk assessment as a condition of eligibility. Specify that this requirement applies to current childless adult MA recipients no sooner than October 31, 2019.

Hospital Emergency Department Copayment. Specify that childless adults must be charged an $8 copayment for nonemergency use of a hospital emergency department, in accordance with federal requirements.

General Compliance with Waiver Approval. Require DHS to comply with any other requirements in the waiver approved by the federal Department of Health and Human Services on October 31, 2018, that are not otherwise specified above. Specify that the provisions of the bill's general waiver implementation provision (summarized under "Health Services," Item 1) apply to the implementation of the childless adult demonstration waiver.

Prohibit DHS from requesting the suspension or termination of the waiver requirements prior to December 31, 2023, unless legislation has been enacted specifically allowing for the suspension or termination.

Require DHS to implement the provisions of the demonstration waiver by no later than November 1, 2019. Specify that if DHS is unable to fully implement the provisions by that date, the Department may request an extension of up to 90 from the Joint Committee on Finance under a 14-day passive review process. Specify that the Department may request additional extensions, under this 14-day passive review process.

Specify that if the Committee determines that DHS has not complied with the deadline to implement provisions of the waiver or complied with implementation timelines applicable to approved waivers by DHS under this bill, the Committee may reduce from moneys allocated for state operations or administrative functions the Department's appropriation or expenditure authority, whichever is applicable, or change the Department's authorized level of full-time equivalent positions related to the medical assistance program. Specify that the procedures under s. 13.10 of the statutes do not apply to this provision.

Insurance

1. Implementation of the Wisconsin Health Stability Plan. Require the Office of the Commissioner of Insurance (OCI) to implement the Wisconsin healthcare stability plan (WHSP) in accordance with the specific terms and conditions approved by the federal Department of Health and Human Services (DHHS) dated July 29, 2018, and specify that any administrative rules promulgated to administer WHSP must comply with that federal approval. Specify that any rule promulgated by OCI to administer the program remains in effect until it is superseded by a subsequent emergency or permanent rule, including an emergency rule promulgated before January 1, 2019. Prohibit OCI, before December 31, 2023, from submitting a request to DHHS for any modification, suspension, withdrawal, or termination of the waiver unless legislation has been enacted specifically directing the modification, suspension, withdrawal, or termination. Specify that OCI may request renewal of the waiver prior to December 31, 2023, without substantive change, unless legislation has been enacted that is contrary to such a renewal request.

Require the Insurance Commissioner to: (a) complete and submit any reports, provide any information, and participate in any oversight activities required by DHHS to implement and maintain WHSP; and (b) ensure that sufficient funds are available for WHSP to operate as described by DHHS in the approval of July 29, 2018.

Establish the parameters for calculating reinsurance payments to insurers for the 2019 benefit year under WHSP as follows: (a) an attachment point of $50,000; (b) a reinsurance cap of $250,000; and (c) a coinsurance rate of 50%. Specify that OCI may not adjust the payment parameters for the 2019 benefit year. These reinsurance parameters match the parameters that OCI has established for 2019.

Repeal a statutory requirement related to the initial submittal of a federal waiver request for the WHSP and repeal a statutory provision, effective December 31, 2018, that requires OCI to submit a report by December 31, 2018, with recommendations for any possible additional waivers to be requested to stabilize the individual health care market in Wisconsin.

The Wisconsin healthcare stability plan, created by 2017 Act 138, is a reinsurance plan for the individual health insurance market, designed to lower insurers' costs associated with high-cost individuals. Under WHSP, OCI makes payments to health insurance companies to offset a portion of the cost associated with high-cost claims, based on established parameters. Act 138 authorized OCI to submit a waiver under a provision of the Affordable Care Act to allow the state to use a portion of federal premium tax credits, in combination with state funds, to pay these claims. Total annual funding for reinsurance payments was set in the Act at $200 million. OCI submitted a request and the federal government approved the state's proposal. This item would require OCI to implement provisions of the approved waiver as approved by DHHS.

State funding for reinsurance payments are provided through a GPR sum sufficient appropriation. Payments for the 2019 benefit year are expected to be made in 2020-21, but a portion could be paid in 2019-20. Although OCI has estimated that 2019 payments will require approximately $34 million GPR, OCI did not include a GPR estimate for the sum sufficient

appropriation in its 2019-21 budget request. Consequently, this funding obligation is not included in DOA's November 20 summary of agency requests.

Workforce Development

1. Wisconsin Fast Forward Appropriations. Convert the Department of Workforce Development's (DWD) continuing GPR appropriation for workforce training grants and services into eight separate annual GPR appropriations. The following table shows the 2018-19 funding allocations under current law and under the bill.

Wisconsin Fast Forward Appropriations

	Current Law 2018-19	Bill 2018-19
Workforce Training Grants and Services	$13,595,900	$6,250,000
Career and Technical Education Incentive Grants		3,500,000
Technical Education Equipment Grants		500,000
Teacher Development Program Grants		0
Apprenticeship Programs		225,000
Local Youth Apprenticeship Grants		2,233,700
Employment Transit Assistance Grants		464,800
Youth Summer Jobs Programs		422,400
Appropriation(s) Total	$13,595,900	$13,595,900

As shown in the table, the Department would have the same total appropriation authority under the bill as in current law ($13,595,900) but because the current workforce training grants and services appropriation is changed from continuing to annual, any amount not expended or encumbered by June 30, 2019 from this appropriation account would lapse to the balance of the general fund. The workforce training grants and services continuing appropriation account currently has a balance of $57.6 million. Of this amount, $26.7 million has been expended or encumbered with $30.9 in expenditure authority remaining in the appropriation.

Under the bill, any moneys encumbered in DWD's workforce training grants and services appropriation account before the effective date of the bill would not lapse to the general fund and may be expended pursuant to the terms of the encumbrance. Assuming that the Department expends or encumbers additional amounts prior to the effective date of the bill, it is estimated that between $20 and $25 million would lapse to the general fund in 2018-19.

Provide that DWD may request during the 2018-19 fiscal year that the Joint Committee on Finance transfer moneys from the remaining Fast Forward appropriation ($6,250,000) to the teacher

development program grants and local youth apprenticeship grants appropriations to sufficiently fund those grant programs. Specify the Committee would not be required to make findings under s. 13.101 of the statutes that are otherwise required for a transfer between appropriations.

2. Waivers of Unemployment Insurance Work Search. Provide that work-registration and work-search waiver provisions for certain unemployment insurance (UI) claimants that are currently contained within the administrative code be specified in statute, and eliminate DWD's general rulemaking authority to establish waivers from work search and registration requirements. The current administrative code requirement that a UI claimant provide DWD with verification of having performed the required search actions each week would also be specified in statues under this provision.

Require the Department to waive a UI claimant's requirement to register for work if any of the following reasons apply to the claimant:

- *Expectation for Reemployment.* DWD determines that the claimant is currently laid off, but there is a reasonable expectation of reemployment of the claimant by that employer within a period of eight weeks, which may be extended up to an additional four weeks but not to exceed a total of 12 weeks. In determining whether the claimant has a reasonable expectation of reemployment by an employer, the Department must request the employer to verify the claimant's employment status and must also consider certain other factors as described in current law.

- *Expectation for New Employment.* The claimant has a reasonable expectation of starting employment with a new employer within four weeks and the employer has verified the anticipated starting date with the Department. A waiver under this provision may not exceed four weeks.

- *Union Referral.* The claimant has been laid off from work and routinely obtains work through a labor union referral and meets certain requirements specified in a following paragraph.

- *Jury Duty.* The claimant is summoned to serve as a prospective or impaneled juror.

- *Participation in a Training Program.* The claimant is enrolled in and satisfactorily participating in a self-employment assistance program, work-share program, approved training, or another program established under state or federal law, and the program provides that claimants who participate in the program shall be waived by the Department from work registration requirements.

- *Department Determination.* The claimant is unable to complete registration due to circumstances that the Department determines are beyond the claimant's control.

Specify if a UI claimant has been laid off from work and routinely obtains work through a labor union referral, all of the following apply for a registration waiver under that allowance: (a) the union is the primary method used by workers to obtain employment in the claimant's customary occupation; (b) the union maintains a record of unemployed members and the referral activities of these members, and the union allows the Department to inspect such records; (c) the union provides, upon the request of the Department, any information regarding a claimant's registration with the union or any referrals for employment it has made to the claimant; (d) prospective employers of the claimant seldom place orders with the public employment office for jobs requiring occupational

skills similar to those of the claimant; (e) the claimant is registered for work with a union and satisfies the requirements of the union relating to job referral procedures, and maintains membership in good standing with the union; and (f) the union enters into an agreement with the Department regarding the requirements of this subdivision.

Require the Department to waive a UI claimant's requirement to conduct a reasonable search for suitable work and provide verification of least four actions per week that constitute a reasonable search for work if any of the following reasons apply to the claimant:

- *Registration Waiver Criteria.* This includes items described previously for an expectation for reemployment, expectation for new employment, union referral, jury duty, or participation in a training program.

- *Performance of Work.* The claimant performs any work for his or her customary employer.

- *Department Error.* The claimant has not complied with the requirement because of an error made by personnel of the Department.

- *Failure to Display UI Posters.* The claimant's most recent employer failed to post appropriate notice posters as to claiming unemployment benefits as required by the Department by rule, and the claimant was not aware of the work search requirement.

- *Reemployment Services.* The claimant has been referred for reemployment services, is participating in such services, or is not participating in such services but has good cause for failure to participate. A claimant is considered to have good cause if he or she is unable to participate due to any of the following: (a) the claimant is participating in an approved training program as described previously; (b) the claimant is employed; (c) the claimant is attending a job interview; or (d) circumstances that the Department determines are beyond the claimant's control.

Authorize the Department to modify the availability of any work search or registration waiver, or establish additional work search or registration waivers, if doing so is necessary to comply with a requirement under federal law or is specifically allowed under federal law.

Specify that a claimant is ineligible to receive benefits for any week for which there is a determination that the claimant failed to comply with the registration and search requirements, or failed to provide verifications to the Department that the claimant complied with those requirements, unless DWD has waived those requirements.

Under current law, a UI claimant must register for work with the Wisconsin Job Service (Job Center of Wisconsin), and the claimant is eligible for benefits in any given week only if the claimant conducts a reasonable search for suitable work during that week, unless the search requirement is waived. The search for suitable work must include at least four actions per week that constitute a reasonable search as prescribed by rule of the department. Prior to June 14, 2015, DWD, by administrative rule, waived a claimant's work-search requirement if the claimant was laid off but there was a reasonable expectation of reemployment of the claimant by that employer. As of July 14, 2015, the Department altered the administrative rule to provide a work-search waiver only if the

claimant is currently laid off from employment but there is a reasonable expectation that the claimant will be returning to employment within a period of eight weeks, with a possibility of one additional four-week extension.