ANALYSIS OF PROPOSED UI LAW CHANGE
Department Flexibility for Federal Funding

1. Description of Proposed Change

Current law sets forth three separate provisions that allow the department to suspend provisions of the UI law in specific circumstances: a general savings clause, provisions concerning the work share statutes and occupational drug testing.

The savings clause provides: “The department may, with the advice of the council on unemployment insurance, by general rule modify or suspend any provision of this chapter if and to the extent necessary to permit continued certification of this chapter for [federal administrative] grants… and for maximum credit allowances to employers under the federal unemployment tax act.”  

Likewise, the Department’s Secretary may waive compliance with any part of the work share statute to ensure that the statute conforms to federal requirements and for Wisconsin to “qualify for full federal financial participation in the cost of administration of [the work share program] and financing of benefits to employees participating in work-share programs.”

The Department’s Secretary may also waive compliance with the occupational drug testing statutes to ensure federal conformity.

The flexibility in current law ensures that the Department will maintain its primary source of funding for the unemployment program and can maximize the federal funding for work share benefits. Indeed, during the past year the Department has ensured that employers may maintain work share plans longer than six months in a 5-year period so that Wisconsin could

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1 Wis. Stat. § 108.14(13).
2 Wis. Stat. § 108.062(19).
receive an increased amount of federally-funded work share benefits by waiving the 6-month requirement.

On March 27, 2020, the federal CARES Act was enacted. It provided full federal funding for the first week of unemployment insurance benefits for states that did not have a waiting week. Wisconsin has a waiting week, but the Legislature temporarily suspended the waiting week under 2019 Wis. Act 185, retroactive to March 15, 2020. However, because Act 185 was not enacted until April 15, 2020, the US Department of Labor determined that no federal funding for the first week of unemployment was payable for the 3-week period of March 29, 2020-April 18, 2020. This resulted in a loss of an estimated $43.5 million in total federal reimbursement of benefits for the Trust Fund and reimbursable employers.4

The Department proposes a law change that would permit the Department’s Secretary to issue an order (which is not a rule), published in the register, waiving or suspending any part of chapter 108 to facilitate full federal funding of unemployment benefits. This proposal would also permit the Department’s Secretary to issue an emergency rule without the requirement of showing an emergency to waive, suspend, or amend any part of chapter 108 to facilitate full or partial federal funding of benefits or to receive additional program administration funding.

These changes would ensure that Wisconsin maximizes its receipt of federal funding.

2. Proposed Statutory Change

Section 108.14 (13) of the statutes is renumbered to section 108.14 (13) (a).

Section 108.14 (13) (b) and (c) of the statutes is created to read:

(b) The secretary may waive compliance with any requirement under this chapter if the secretary determines that doing so will permit full federal financing of benefits. A waiver under this

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4 This amount is subject to revision as the Department completes the benefit recharging under section 108.07(5)(bm).
paragraph is not a rule under s. 227.01(13) and shall be effective upon publication in the Wisconsin administrative register.

(c) The department may, with the advice of the council on unemployment insurance, by rule, modify or suspend any provision of this chapter if and to the extent necessary to receive additional federal program administration funding or financing of benefits to employees. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

3. Effects of Proposed Change
   a. Policy: This proposal will ensure that the Department has the flexibility to secure maximum federal funding of unemployment benefits and administrative costs.
   b. Administrative: The Department will need to train staff on the changes in this proposal.
   c. Fiscal: A fiscal estimate is not yet available.

4. State and Federal Issues
   There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date
   This proposal would be effective with the other changes in the agreed bill.
FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
This proposal would amend Wisconsin law to permit the Department’s Secretary to issue an order (which is not a rule), published in the register, waiving or suspending any part of chapter 108 to facilitate full federal funding of unemployment benefits.

This proposal would also permit the Department’s Secretary to issue an emergency rule without the requirement of showing an emergency to waive, suspend, or amend any part of chapter 108 to facilitate full or partial federal funding of benefits or to receive additional program administration funding.

These changes would ensure that Wisconsin maximizes its receipt of federal funding.

UI Trust Fund Impact:
The UI Trust Fund impact is indeterminate but is expected to be positive or neutral.

IT and Administrative Impact:
The IT costs and administrative impacts are indeterminate. Typically, the federal government provides grant money to implement programs and changes that are created by the federal law.

Trust Fund Methodology:
Since the exact situation is not known, the impact cannot be calculated..