

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

**Offices of the State of Wisconsin Investment Board
121 East Wilson, Room 226
Madison, Wisconsin**

May 2, 2013

The meeting was preceded by public notice as required under s. 19.84, Stats.

Members Present: Janell Knutson (Chair), Michael Gotzler, Earl Gustafson, Edward Lump, James LaCourt, Sally Feistel, Anthony Rainey, Mark Reihl and Scott Manley.

Department Staff Present: Scott Sussman, Connie Schulze (Legislative Liaison), Tom McHugh, Rob Usarek, Robin Gallagher, Amy Banicki, Mary Rosenak, Jill Moksouphanh, Lutfi Shahrani, Jason Schunk, Pam James and Janet Sausen.

State Legislators and Legislative Staff Present: Representative Michael Schraa (53rd Assembly District), Deej Lundren (Senator Paul Farrow's Office), Adam Gibbs (Senator Glenn Grothman's Office), Mitch Ohly (Representative Scott Suder's Office), BJ Dernbach (Representative Dan Knodl's Office), Craig Summerfield (Representative Robin Vos's Office), Lonna Morouney (Representative Amy Loudenbeck's Office), Erik Kanter (Representative Chris Kapenga's Office), Mary Beth George (Representative Christine Sinicki's Office)

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council ("Council") meeting to order at approximately 10:10 a.m. in accordance with Wisconsin's open meetings law. Ms. Knutson thanked the State of Wisconsin Investment Board for use of their facilities and assisting in organizing the meeting today. Ms. Knutson thanked James Buchen, who retired from the Council after 25 years, for his service and welcomed Scott Manley, Vice President of Government Relations at the Wisconsin Manufacturing and Commerce, to the Council.

Council Members and legislative aides were acknowledged.

2. Approval of Minutes

Motion

Motion by Mr. Rainey, second by Mr. Gotzler to approve the April 18, 2013 Council minutes. Motion carried unanimously.

3. Update from the Department: Ms. Knutson updated the Council on the following items:

Department Website

The Department is finalizing a website that both employees and employers can utilize as a resource for issues pertaining to job classifications. This website will assist in identifying when a worker is considered an employee or an independent contractor. The determination of this classification will impact whether an employer must pay unemployment insurance tax, carry worker's compensation insurance and follow federal labor standards. The Department will conduct a publicity campaign and issue a press release once the website is complete. A demonstration of the website will be given to Council members.

Debit Cards for Unemployment Insurance Payments

Unemployment insurance ("UI") benefits will be offered through debit cards effective June 14, 2013. Claimants filing initial claims will have the option of either direct deposit or through a debit card for payments. Existing claimants will continue to receive payments by direct deposit or paper check, unless they elect to receive payment by debit card. The long-term goal is for claimants to receive benefit payments directly through a debit card or by direct deposit, and only in rare cases the Department will issue paper checks.

President's Budget Proposal

President Barack Obama announced as part of his budget proposal submittal to Congress a number of provisions that could impact the unemployment insurance program. One called for a suspension of interest payments for individual states that have UI debt, and a suspension in Federal Unemployment Tax Act ("FUTA") credit reductions to states that have received loans from the federal government to pay their unemployment insurance benefits. In addition, the FUTA wage base would increase from \$7,000 to \$15,000, significantly increasing employer taxes, especially in Wisconsin. Wisconsin's current taxable wage base is currently set at \$14,000, which would likely need to increase to \$15,000 if the federal budget proposal is approved. As information becomes available, Ms. Knutson will update the Council.

4. Department Analysis of Correspondence from Wisconsin Association of Staff Services

Lori Mallet, Board President of the Wisconsin Association of Staffing Services (“WASS”), submitted a letter of request for the Council to consider raising the taxable wage base to \$28,000 and lowering the UI tax rates.

Mr. McHugh, Bureau of Tax and Accounting Director, updated the Council on the current tax system. Every year on June 30, the unemployment reserve fund balance determines which of the four different tax schedules will be used for the following year. Currently, the reserve fund balance is negative, which will result in the Schedule A tax chart being used for 2014. Schedule A has been used since 2010, when the reserve fund balance fell below \$300 million. Employer tax rates are determined by using the reserve fund balance of the previous year and dividing that number by the taxable payroll of the employer from the previous year.

As a new employer, for the first three years, new employer tax rates under Schedule A are 3.6% for a small employer (under \$500,000 in taxable payroll) and 4.1% for large employers (over \$500,000 in taxable payroll). The new construction tax rate decreased in 2013 to 6.6% (2012 rate was 7.1%). This rate is determined yearly and is the same for both small and large construction employers.

Wisconsin allows a rate limiter, which was implemented in 1982. For any employer whose reserve percentage is less than zero their contribution rate may not increase more than 2% rounded to the next highest rate bracket on an employer’s basic tax rate. For any employer with a positive reserve fund balance their contribution rate may not exceed an increase of more than 1% rounded to the next highest rate bracket on an employer’s basic tax rate.

Mr. Usarek, Policy Analyst, provided the Council an analysis of the WASS proposal. The WASS proposal calls for changing the unemployment insurance (“UI”) taxable wage base from \$14,000 to \$28,000. It also calls for decreasing the tax rates to achieve revenue neutrality once the UI trust fund regains solvency.

Employers pay both state and federal UI taxes. Federal UI taxes that are collected pay for UI administration, federal extended programs, and loans to states. State UI taxes that are collected (composed of a basic tax and a solvency tax) are used to pay UI benefits. The WASS proposal will only impact state UI tax.

Mr. Usarek presented ten charts that illustrate the resulting changes in tax revenue and the UI trust fund balance based on tax revenue and benefit payments that were estimated under the new framework for the years 2014-2018 as proposed by WASS. These charts do not reflect economic projections which will have substantial effects on the numbers reported in the charts.

Increasing the wage base to \$28,000, and maintaining revenue neutrality in 2014, will increase tax revenue and improve the position of the UI trust fund. In addition, the distribution of who pays UI taxes would change. In general, employers that pay lower wages or employ many part-

time workers will see a reduction in taxes, at least initially. Employers at the highest tax rate and with higher wage workers will see an increase in taxes.

Although the tax rates under the WASS proposal are halved (halving tax rates is not an option however) increasing the wage base does strengthen the UI financing system by capturing a greater proportion of wage growth in the economy. Mr. Usarek will electronically distribute the illustrated charts to Council members for further review.

5. Consideration of April 1, 2013 Legislative Proposals and Proposal from Senator Joe Leibham in Closed Caucus Session

The following items require Council consideration:

LRB 1636/2

Senator Leibham's April 1, 2013, letter requesting Council support for the legislative proposal to use General Purpose Revenue (GPR) for the payment of interest on advances made by the federal government to the unemployment fund rather than through employers being charged Special Assessment for Interest (SAFI) payments.

Legislative Proposals

The Council also needed to address a number of remaining proposals that were contained in the April 1, 2013 letter from legislators. The remaining proposals include:

- Item #25 – Temporary Agency Work Search.
- Item #27 – SAFI Reimbursement for Businesses.
- Item #28 – Treatment of Legal Holidays for Unemployment Insurance.
- Item #30 – Link Eligibility Weeks to Unemployment Rate.
- Item #31 – Increase Lowest Reserve Percent.

Department staff met with Legislative Reference Bureau attorneys related to Item #30. The LRB attorneys raised questions about Item #30 in relation to the Wisconsin Supplemental Benefits ("WSB") program and Ms. Knutson conveyed this issue to the Council. The Wisconsin legislature created WSB in the 1980s when the maximum duration of payable UI benefits decreased to 26 weeks from 34 weeks. In certain circumstances, WSB will pay for an additional 8 weeks of unemployment insurance once a claimant has exhausted his or her 26 weeks of regular unemployment benefits. One of the conditions is that WSB is only payable when federal emergency unemployment compensation and extended benefits are not available and the Governor has signed an executive order to stop WSB payments. In 2000, the Governor signed an executive order to stop payments and the law has not been utilized since. The intent behind Item #30 is to tie the length of time that a claimant is eligible for regular unemployment benefits to the state's unemployment rate. Yet, if WSB remained on the books, without modifications, it would run counter to the intent behind Item #30 by providing claimants extra unemployment insurance benefits even if the state's unemployment rate is low.

***D12-06 DWD Overpayments and
D12-08 Claimant Fails to Provide Information***

Ms. Knutson requested that the Council reconsider including Department Proposal D12-06 (Item #5), DWD Overpayments, and Department Proposal D12-08 (Item #8), Claimant Fails to Provide Information, in the agreed upon bill. These items were included in the legislators' April 1 letter, but the Council had never announced a reason for why it supported or opposed these proposals. Ms. Knutson requested that the Council to provide an explanation if it elects to not include these proposals within the agreed upon bill.

Update on Legislative proposals:

Item #12, Increasing Employer's Ability to Reoffer Employment, and Item #29, Employer Notification of Work Search will not be included in the agreed upon bill. The federal government confirmed in writing that these items create federal conformity issues and legislators have been notified of this fact.

Item #13, Backdate Claims Due to Phone System Down, is no longer being considered due to the Department moving forward with unemployment insurance modernization efforts and the Council's approval of Department Proposal D12-32. The Department will not be pursuing Item #13 and legislators have been notified.

Motion

Motion by Mr. Gotzler, second by Mr. Rainey to recess and go into closed caucus session pursuant to s. 19.85(1)(ee), Stats., and reconvene later in the afternoon. The motion carried unanimously and the meeting was recessed at approximately 11:35 a.m.

6. Report out of Caucus

The Council reconvened at approximately 3:10 p.m. and made the following recommendations related to the proposed legislation:

D12-06 (Item #5 within legislators' letter of April 1, DWD Overpayments) - The Council did not make any modifications to the Department's proposal. The proposal clarifies and narrows the situations where the law would classify actions as Department error and thus limits when claimants can retain erroneous overpayments; and

D12-08 (Item #8 within legislators' letter of April 1, Claimant Fails to Provide Information to Department) - The legislation suspends benefits if a claimant does not provide certain requested information to the Department. The claimant will only receive these benefits when he or she provides the information to the Department, if otherwise qualified to receive benefits. Originally, the proposal was that the claimant would only be eligible for these suspended benefits if there was good cause for his or her failure to provide the requested information. The

Council proposed amended language and the Department did not raise any administrative concerns with the language change.

Motion

Motion by Ms. Feistel, second by Mr. Gotzler to include D12-06 into the agreed upon bill, and D12-08 with language modifications. The motion carried unanimously.

Item #25 - Temporary Agency Work Search

The Council did not agree to include this proposal in the agreed upon bill.

Mr. Manley made a motion for a roll-call vote with respect to the Temporary Agency Work Search proposal with a second by Mr. Lump. After discussion of the history of the Council process with respect to the agreed bill process and voting, Mr. Lump withdrew his second to the motion.

The Labor members of the Council are opposed to Item #25. Ms. Feistel stated Item #25 forces individuals to take jobs that conflict with the requirements of suitable work and frustrates the purpose of unemployment insurance benefits which is to maintain the workforce.

The Management members of the Council are in support of Item #25. Mr. Manley states Item #25 does not require an individual to take an unsuitable job.

Item #27 - SAFI Reimbursement for Businesses and LRB 1636/2

Motion

Motion by Mr. Manley and second by Ms. Feistel to direct the Department to write a letter to the signatories of the April 1, 2013, letter and to Senator Leibham to state the Council has no objection to the legislature moving forward with this bill and proposal; however, this proposal involves allocating money from other agencies' budgets. The Council elected to not include the proposal in the Council's agreed upon bill.

Item #28 – Treatment of Legal Holidays for Unemployment Insurance

The Council did not agree to include this proposal in the agreed upon bill.

Mr. Rainey stated Council members believe Item #28 presents administrative hurdles to both employers and the Department. Mr. Manley understood the intent of the proposal, but the idea of creating a new reporting system on employers would be burdensome. Mr. Lump stated that this implementation would impact small businesses, especially in the restaurant and retail areas where federal holidays are usually not recognized with time off.

Item #30 – Link Eligibility Weeks to Unemployment Rate.

The Council did not agree to include this proposal in the agreed upon bill.

Ms. Feistel stated further discussions are necessary and should be addressed with the solvency issues. Wisconsin's average claim of 10 weeks for benefits is less than the national average of 26. Mr. Gustafson expressed his concern with the amount of weeks that may be available at the various unemployment rates. There is also a need to address geographic anomalies where the economy is stronger in different areas. The concept of Item #30 should continue to be explored. Mr. Reihl stated there are still 400-500 carpenter members unemployed in the Milwaukee area, and the proposal as is, is a one-size-fits-all approach to situations that vary throughout the state.

Item #31 – Increase Lowest Reserve Percent.

The Council did not agree to include this proposal in the agreed upon bill.

Mr. Manley stated there are questions that remain unanswered related to the impact of increasing the lowest reserve percent on certain sectors of the economy and what that would do to UI taxes and impact on some of the constituencies. This proposal must be further considered in broader context on how it would fit into the tax tables and with the rate limiters. Ms. Feistel stated Labor members of the Council understand the position of the Management members.

Ms. Knutson stated that the Council had responded to all of the proposals and she will advise the legislators of the Council's comments and actions. The issue of trust fund solvency should be further studied by the Council.

7. Future Meetings

The Council is scheduled to meet Thursday, May 16, 2013, in Madison at DWD – GEF 1 building.

8. Other Business

The following items were discussed as potential agenda items for the next meeting:

- Continuation of discussion of the WASS proposal.
- Update on the Unemployment Insurance Reserve Fund.
- Council's proposals for the agreed upon bill.

9. Adjournment

Motion

Motion by Ms. Feistel, and seconded by Mr. Gotzler to adjourn the meeting at approximately 3:45 p.m. Motion carried unanimously.