

2007 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB40)

Received: **07/06/2007**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Pollek**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **NO**

Pre Topic:

LFB:.....Pollek -

Topic:

Weights and measure contracting for municipalities over 5,000

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	csundber 07/06/2007	csicilia 07/06/2007					
/1	csundber 07/07/2007	kfollett 07/07/2007	jfrantze 07/06/2007		mbarman 07/06/2007		
/2			jfrantze 07/07/2007		chanaman 07/07/2007		

FE Sent For:

<END>

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/1		12 jf 7/7	jfrantze 07/06/2007	_____	mbarman 07/06/2007		
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/?	csundber	1 cjs 7/6 07		J. Bull 7/6			

FE Sent For:

<END>

Sundberg, Christopher

From: Pollek, Chris
Sent: Friday, July 06, 2007 9:54 AM
To: Sundberg, Christopher
Subject: w&m amendment

Hi Chris,

Sorry about the delay, I got sidetracked for a moment.

Here's what we've been able to make of the amendment text so far:

Allow municipalities with a population of over 5,000 people to outsource weights and measures testing and inspection duties to properly trained and certified individuals (an inspector or a sealer), provided the municipality has adopted municipal rules that give the individual enforcement authorization.

We think they want to allow municipalities that are required to have their own departments to instead contract out for these purposes, but we're not sure. We're trying to get additional clarification from the sponsor and we'll let you know as soon as we receive more info.

Thanks,

Chris

Sundberg, Christopher

From: Pollek, Chris
Sent: Friday, July 06, 2007 11:47 AM
To: Sundberg, Christopher
Subject: FW: Municipal Weights and Measures

Attachments: Municipal Weights & Measures Sealers and Inspectors Issue.Info Letters.pdf; Municipal Weights & Measures Sealers and Inspectors Issue.Memo.doc

Here you go, Chris.

Please let me know if you have any questions or concerns.

Thanks,

Chris

From: Dicks, Jacque
Sent: Friday, July 06, 2007 11:06 AM
To: Pollek, Chris
Subject: Municipal Weights and Measures

Chris,

This is a follow up to our conversation regarding Rep. Nygren's Municipal Weights and Measures Budget Amendment.

Attached is a PDF file containing two letters. One is from Paul Enterprises expressing concerns with DATCP's rule change. The second letter is the explanation from DATCP to the City of Marinette's Legal Counsel regarding the rule change.

I have also attached a memo sent to Reps. Albers, Fitzgerald and Kestell from Rep. Nygren regarding the concerns being expressed in their districts with the recent rule change. The fourth paragraph entails suggestions from the City of Marinette to address this issue.

Last item is an article from the Marinette EagleHerald regarding the issue.

I hope this information will be of assistance. If you have any further questions and/or need additional information, please let me know.

Jacque Dicks

*Legislative Assistant
Office of Representative John Nygren
P.O. Box 8953
Madison, WI 53708-8953
Office: (608) 266-2343
Toll-Free: (888) 534-0089
Fax: (608) 282-3689*



Municipal Weights & Measures S...



Municipal Weights & Measures S...

City not in compliance with state law

Published Wednesday, June 6, 2007 11:34:20 PM Central Time

Advertisement

By DONN WILLIAMS

EagleHerald staff writer

dwilliams@eagleherald.com

MARINETTE -- The state of Wisconsin has told the city it is not complying with state law by contracting with a private individual to do its weights and measures testing.

The public safety and code enforcement committee discussed the situation prior to Tuesday's city council meeting.

City Attorney Jonathan Sbar received a letter from the state last year informing him the city needed to hire a municipal employee to do weights and measures testing, and buy all of the necessary equipment to comply with state requirements.

Sbar said the city responded by telling the state it had just approved its budget for 2006 and it didn't have any money available to hire someone and buy the equipment.

The city's current contract for the testing of gas pumps, store scales and price scanners is with Ron Paul, a former state weights and measures tester, who went into business for himself. It expires June 30.

City Clerk Jim Anderson said the city sent out requests for proposals to do the testing and the only reply received came from Paul who bid \$5,200, the same price the city paid him last year for the service.

Sbar said he couldn't recommend rehiring Paul, if the state does not see his service as complying with the law.

Anderson said the city could hire an employee who does testing in larger cities, such as Green Bay or Oshkosh, Wis., but no city responded to his request for proposals.

If the city of Marinette hired someone itself to do the weights and measures testing, it would not only have to pay for the week of work that's required, but also the training for the required certification, and the acquisition or rental of the equipment.

As of yet, the state hasn't gotten back to the city with its recommendation for solving the issue.

The committee decided to meet again on June 25, two weeks later than normal, to give the state opportunity to respond.

Donn Williams may be contacted at (715) 735-7500, ext. 159, or at dwilliams@eagleherald.com.

**PAUL ENTERPRISES
N10773 HWY A
FOX LAKE, WI 53933
PHONE: 920-928-3499**

December 5, 2006

Mayor, City Clerks & Administrator
Jim Anderson, Marinette
Anna Meister, Reedsberg
Patricia Huberty, Plymouth
Joel Tauschek, Sheboygan Falls
Jack Hankes, Beaver Dam
John Somers, Beaver Dam

Dear City Office Holders:

On 12-4-06 I received a copy of a letter From the Department of Ag (DATCP) addressed to the City of Marinette's legal counsel. (Attached) I am sure someone in your City Government received a similar letter.

I talked to some of you and you stated the letter was very confusing and did not understand its meaning. My gist of the letter wants your cities to end your contracts for weights & measures, thus hiring DATCP. The state of Wisconsin is 1.6 billion dollars short of their budget. This is one method of obtaining more money and reducing their budget deficits. This would also increase your taxes to your taxpayers.

Back in 2003 when most of you hired Paul Enterprises LLC to do your W & M work you were unhappy with DATCP. Based on your conversations you were billed for work that was not done or billed for work which was not in the city. In addition, no copies of the inspection reports were provided and the reports that were provided you could not understand. Some of you tried to recoup your overcharges; however, DATCP never refunded any money for their overcharges and some of you were told some untruths. In October of 2004 DATCP passed a revised administrative code which permitted contracting. (Attached) The Wis. Adm. Code gave DATCP much more authority based on their interpretations of the law, but did not give DATCP any enforcement powers. Most of you also received a letter from DATCP's legal counsel, Teal Haas, where she states you could contract with me after I retired. (Attached) I am sure you are all aware that I only did W & M work after I retired. After contracting was legal DATCP lost many, many contract city days which reduced their income. Now they changed the code so you allegedly cannot hire by contract. This means you will pay at least one hundred dollars more per five hour day than you are by contracting for an eight hour day. The five hour day includes drive time to your city while the contractor drives to your city on their own time.

It is my opinion that our contracts are legal and binding until such time as one of the parties is unhappy and notifies the other. I also believe that the contract must be grandfathered. I am contacting my attorney and will contact you after I receive his opinion.

I am still receiving calls from other cities that are unhappy with DATCP'S service and programs. I would greatly appreciate any names and addresses of people in government that you may come across who are not satisfied with DATCP.

Sincerely

A handwritten signature in cursive script that reads "Ronald Paul".

Ronald Paul
Paul Enterprises LLC, President

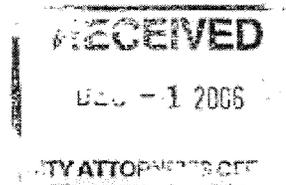


State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

November 30, 2006

JONATHAN SBAR ATTORNEY
CITY OF MARINETTE
1905 HALL AVE
MARINETTE WI 54143-1716



Re: Municipal Weights and Measures Sealers and Inspectors

Dear Mr. Sbar:

Wisconsin weights and measures law requires municipal sealers and inspectors to be employees of the municipality. This letter is to inform you that, as of December 1, 2006, the department has made a technical rule change that eliminates any confusion in our rules concerning the correct interpretation of this law.

The department administers Wis. Stat. § 98.04 (1). This law requires municipal sealers or inspectors to be selected from "a list of applicants whose qualifications have been certified by the state or local civil service agency under the rules of the agency." Since only employees are certified by civil service agencies, only an employee may be recognized as a qualified sealer or inspector.

The department is authorized to promulgate rules that interpret the laws it administers, but may not write rules that go beyond the scope of the law. Wis. Adm. Code § ATCP 92.08 (1) is the department rule that interprets Wis. Stat. § 98.04 (1).

Prior to December 1, 2006, this department rule contained language discussing the use of contractors that may be interpreted to go beyond the scope of the law and the department's rule-making authority. For this reason, the department has amended the rule to make it clear that the rule maintains the restrictions imposed by the law, and demands that all municipal sealers and inspectors be municipal employees.

Accordingly, Wis. Adm. Code § ATCP 92.08 (1) now reads as follows:

"A municipality that has a weights and measures program under s. 98.04 Stats., shall hire its inspectors from a list of applicants whose qualifications have been certified by the state or local civil service agency under the rules of the agency."

Reedsburg WI
Plymouth WI

Agriculture generates \$51.5 billion for Wisconsin

2011 Agriculture Today - PO Box 2011 - Madison, WI 53708 2011

Please review your weights and measures practices in light of this discussion. You may call Judy Cardin at 608-224-4945 if you have any questions.

Sincerely,



David J. Ghilardi
Assistant Legal Counsel

Cc: James L. Rabbitt
Judy Cardin

Chapter 98.01 Statute
2003 ATCP 92 weights & measures rule
allowed for contractors - contradiction
rule change Dec 1 2006



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBb1069/2

CTS: /:....

EMR

gjs

LFB:.....Pollek - Weights and measure contracting for municipalities over
5,000

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2007 SENATE BILL 40

Fix component

(intro.)

*renumbered 98.04
(2)(intro.) and*

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 1210, line 10: after that line insert:

3 "SECTION 2602p. 98.04 (2) of the statutes is amended to read:

4 98.04 (2) A municipality that is required to establish a department of weights
5 and measures under sub. (1) may ~~contract~~ , instead of establishing its own
6 department, do any of the following:

7 (a) Contract with the department of agriculture, trade, and consumer
8 protection to enforce the provisions of this chapter within the municipality's
9 jurisdiction ~~instead of establishing its own department~~ if the department of
10 agriculture, trade and consumer protection agrees to enter into such a contract. The

1 department of agriculture, trade and consumer protection may charge the
2 municipality fees sufficient to cover the department's costs under the contract. A
3 municipality may recover an amount not to exceed the cost of these fees by assessing
4 fees on the persons who receive services under the weights and measures program.

5 **SECTION 2602o.** 98.04 (2) (b) of the statutes is created to read:

6 98.04 (2) (b) Contract with a private party to enforce the provisions of this
7 chapter within the municipality's jurisdiction. A municipality may recover an
8 amount not to exceed the municipality's cost of contracting with a private party
9 under this paragraph by assessing fees on the persons who receive services under the
10 weights and measures program.”.

11 (END)

7/7/07 C. Pollock/LFB

279-7440 cell

Redraft LRB 61069/1:

1. DATCP shall implement certification program for private contractor.
2. Possible issue with delegating police power to private entity?



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBb1069/1
CTS:cjs:jt

2
PWR
EJF

LFB:.....Pollek - Weights and measure contracting for municipalities over 5,000

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

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TO 2007 SENATE BILL 40

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5 98.04 (2) (intro.) A municipality that is required to establish a department of
6 weights and measures under sub. (1) may ~~contract~~ , instead of establishing its own
7 department, do any of the following:

8 (a) Contract with the department of agriculture, trade, and consumer
9 protection to enforce the provisions of this chapter within the municipality's
10 jurisdiction ~~instead of establishing its own department~~ if the department of

1 agriculture, trade and consumer protection agrees to enter into such a contract. The
2 department of agriculture, trade and consumer protection may charge the
3 municipality fees sufficient to cover the department's costs under the contract. A
4 municipality may recover an amount not to exceed the cost of these fees by assessing
5 fees on the persons who receive services under the weights and measures program.

6 **SECTION 26026.** 98.04 (2) (b) of the statutes is created to read:

7 98.04 (2) (b) Contract with a private party to enforce the provisions of this
8 chapter within the municipality's jurisdiction. A municipality may recover an
9 amount not to exceed the municipality's cost of contracting with a private party
10 under this paragraph by assessing fees on the persons who receive services under the
11 weights and measures program.

(END)

who has been certified under sub. (3)

INS 2-11

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb1069/2ins
CTS:.....

1 **Insert 2-11:**

2 **SECTION 2602r.** 98.04 (3) of the statutes is created to read:

3 **98.04 (3)** The department of agriculture, trade and consumer protection shall
4 promulgate rules implementing a program for certifying a person as qualified to act
5 as a private contractor under sub. (2) (b).”



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBb1069/2
CTS:cjs&kjf:jf

LFB:.....Pollek - Weights and measure contracting for municipalities over
5,000

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2 department of agriculture, trade and consumer protection may charge the
3 municipality fees sufficient to cover the department's costs under the contract. A
4 municipality may recover an amount not to exceed the cost of these fees by assessing
5 fees on the persons who receive services under the weights and measures program.

6 **SECTION 2602q.** 98.04 (2) (b) of the statutes is created to read:

7 98.04 (2) (b) Contract with a private party who has been certified under sub.
8 (3) to enforce the provisions of this chapter within the municipality's jurisdiction. A
9 municipality may recover an amount not to exceed the municipality's cost of
10 contracting with a private party under this paragraph by assessing fees on the
11 persons who receive services under the weights and measures program.

12 **SECTION 2602r.** 98.04 (3) of the statutes is created to read:

13 98.04 (3) The department of agriculture, trade and consumer protection shall
14 promulgate rules implementing a program for certifying a person as qualified to act
15 as a private contractor under sub. (2) (b).”.

16 (END)