



1999 SENATE BILL 517

March 28, 2000 – Introduced by Senator SHIBILSKI. Referred to Joint committee on Finance.

- 1 **AN ACT relating to:** expenditure of \$1,049,057 from the general fund in payment
2 of a claim against the state made by Central Wisconsin Inspection Service.

Analysis by the Legislative Reference Bureau

This bill directs expenditure of \$1,049,057 from the general fund in payment of a claim made by Central Wisconsin Inspection Service (CWI) against the department of commerce. One of the owners of CWI, Terrence Bauer, was employed by the former department of industry, labor and human relations (DILHR), the predecessor agency of the department of commerce, as a flammable and combustible liquid system coordinator prior to July 16, 1994. Under a termination agreement between DILHR, CWI and Mr. Bauer, DILHR agreed not to discriminate against CWI in the award of any contracts for which CWI was low bidder on a specific named bid number then pending. CWI alleges that DILHR and its successor, the department of commerce, have failed since July 15, 1994, to award several contracts to CWI when CWI was the low bidder or would have been the low bidder had the departments properly categorized their work, and that the department of commerce terminated its contracts with the claimant on October 30, 1996. CWI also alleges breach of contract, interference with third-party contracts, failure to compensate for certain work under “local program operator” contracts between DILHR and the claimant, discriminatory practices and deprivation of certain constitutional rights. CWI alleges that these actions have rendered its business defunct. According to the department of commerce, its alleged failure to describe certain tanks within certain categories in its bid solicitations is immaterial since payments are based on the number of tanks that are registered on the date of payment and all bidders operate

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from the same information. The department of commerce also alleges that the resolution of this claim is governed by the terms of the resignation agreement and the agreement does not apply to the award of contracts for which bids were due to be filed after the date of the agreement. CWI claimed \$425,082 in estimated net lost profits for the period from November 1, 1996, to May 1, 2006; \$138,009 in unpaid fees that were formerly payable by tank owners to inspection contractors for the period from July 1, 1994, to October 30, 1996; \$428,158 in estimated fees that would have been paid or payable by tank owners for the period from November 1, 1996, to May 1, 2006; \$10,153 in additional income from service plan reviews that would have been earned for the period from July 1, 1995, to October 31, 1996; plus \$32,911 in accrued interest from November 1, 1996, to May 5, 1997, calculated at the rate of 6.39% (total = \$1,049,057). On October 30, 1997, the claims board recommended denial of this claim (see 1997 *Senate Journal*, p. 335).

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1. Claim against the state.** There is directed to be expended from
2 the appropriation under section 20.505 (4) (d) of the statutes, as affected by the acts
3 of 1999, \$1,049,057 in payment of a claim against the state made by Central
4 Wisconsin Inspection Service, Custer, Wisconsin, as reimbursement for lost profits,
5 unpaid fee revenue, estimated lost fee revenue, unpaid plan review income and
6 accrued interest to compensate the claimant for breach of an agreement dated July
7 15, 1994, between the claimant, one of the claimant's owners, Terrence Bauer, and
8 the former department of industry, labor and human relations with respect to
9 participation in the underground storage tank inspection program, for
10 discrimination against the claimant by that department and the department of
11 commerce, for failure to compensate the claimant for certain work under "local
12 program operator" contracts entered into between the former department of
13 industry, labor and human relations and the claimant, for interference with
14 3rd-party contracts and for deprivation of certain constitutional rights. Acceptance

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1 of this payment releases this state and its officers, employes and agents from any
2 further liability to the claimant resulting from this agreement, from breaches of this
3 agreement, from any discriminatory practices against the claimant during the
4 period from July 15, 1994, to May 1, 2006, or from interference with 3rd-party
5 contracts or deprivation of constitutional rights.

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(END)