



2007 ASSEMBLY BILL 650

December 28, 2007 - Introduced by Representatives VAN ROY, MONTGOMERY, NYGREN, F. LASEE, BIES, GRONEMUS, GOTTLIEB, PRIDEMORE, KLEEFISCH, MUSSER, OWENS, KESTELL, LEMAHIEU, VOS, ALBERS, A. OTT, HAHN, ROTH, BALLWEG, NERISON, M. WILLIAMS, MOULTON, NASS, J. OTT, MURSAU and STRACHOTA, cosponsored by Senators COWLES, A. LASEE and GROTHMAN. Referred to Committee on Urban and Local Affairs.

1 **AN ACT** *to amend* 111.70 (1) (a) and 111.70 (4) (m) (title); and *to create* 111.70
2 (4) (pr) of the statutes; **relating to:** a sheriff's decision to privatize food service
3 operation in jails and prohibited subjects of collective bargaining under the
4 Municipal Employment Relations Act.

Analysis by the Legislative Reference Bureau

The Wisconsin Constitution establishes the office of sheriff, but does not specify the duties, powers, and rights of the office. Case law has established the principle that the constitution grants sheriffs "time immemorial" duties that cannot be interfered with by the legislature. Court jurisprudence in this area has sought to distinguish those duties of the sheriff that cannot be governed by the legislature from those "mundane and commonplace" duties of the sheriff that can be regulated by the legislature. Recently, in *Kocken v. Wisconsin Council 40*, 2007 WI 72 (2007), the court held that a sheriff's decision to privatize jail food service operations was a "mundane and commonplace" duty not protected by the constitution and thus was subject to collective bargaining under the Municipal Employment Relations Act (MERA).

This bill makes a sheriff's decision to have persons other than municipal employees provide meals to inmates a prohibited subject of collective bargaining under MERA.

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For further information see the *state and local* 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.** 111.70 (1) (a) of the statutes is amended to read:

2 111.70 (1) (a) “Collective bargaining” means the performance of the mutual
3 obligation of a municipal employer, through its officers and agents, and the
4 representative of its municipal employees in a collective bargaining unit, to meet and
5 confer at reasonable times, in good faith, with the intention of reaching an
6 agreement, or to resolve questions arising under such an agreement, with respect to
7 wages, hours and conditions of employment, and with respect to a requirement of the
8 municipal employer for a municipal employee to perform law enforcement and fire
9 fighting services under s. 61.66, except as provided in sub. (4) (m) and (pr) and s.
10 40.81 (3) and except that a municipal employer shall not meet and confer with respect
11 to any proposal to diminish or abridge the rights guaranteed to municipal employees
12 under ch. 164. The duty to bargain, however, does not compel either party to agree
13 to a proposal or require the making of a concession. Collective bargaining includes
14 the reduction of any agreement reached to a written and signed document. The
15 municipal employer shall not be required to bargain on subjects reserved to
16 management and direction of the governmental unit except insofar as the manner
17 of exercise of such functions affects the wages, hours and conditions of employment
18 of the municipal employees in a collective bargaining unit. In creating this
19 subchapter the legislature recognizes that the municipal employer must exercise its
20 powers and responsibilities to act for the government and good order of the
21 jurisdiction which it serves, its commercial benefit and the health, safety and welfare

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1 of the public to assure orderly operations and functions within its jurisdiction,
2 subject to those rights secured to municipal employees by the constitutions of this
3 state and of the United States and by this subchapter.

4 **SECTION 2.** 111.70 (4) (m) (title) of the statutes is amended to read:

5 111.70 (4) (m) (title) *Prohibited subjects of bargaining; school districts.*

6 **SECTION 3.** 111.70 (4) (pr) of the statutes is created to read:

7 111.70 (4) (pr) *Prohibited subjects of bargaining; counties.* In a county, the
8 municipal employer is prohibited from bargaining collectively with respect to a
9 sheriff's decision to have persons other than municipal employees provide meals to
10 inmates. The municipal employer is also prohibited from bargaining collectively the
11 impact of that decision on the wages, hours, or conditions of employment of the
12 municipal employees who perform those services.

13 **SECTION 4. Initial applicability.**

14 (1) This act first applies to collective bargaining agreements entered into,
15 extended, modified, or renewed, whichever occurs first, on the effective date of this
16 subsection.

17 (END)