



## 2005 ASSEMBLY BILL 520

June 28, 2005 – Introduced by Representatives BERCEAU, BLACK, SINICKI, SHILLING, ZEPNICK and GRIGSBY, cosponsored by Senators MILLER and CARPENTER. Referred to Committee on Labor.

1     **AN ACT to amend** 16.75 (6) (e), 16.855 (18), 16.855 (21) and 16.855 (22); and **to**  
2           **create** 16.753, 16.855 (23) and 560.29 of the statutes; **relating to:** requiring  
3           companies to report net losses of jobs to the Department of Commerce, making  
4           such companies and certain expatriate companies ineligible for certain tax  
5           exemptions, governmental contracts, grants, and loans, granting rule-making  
6           authority, and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Beginning in January 2007, this bill requires a business that experienced a net loss of at least 50 employees in the preceding calendar year to notify the Department of Commerce (Commerce). The company must also complete and submit to Commerce a job relocation survey that includes, among other things, a statement of the number of those jobs that were transferred to employees located outside the United States and any contracts with or grants or loans made by the state or local government.

Under the bill, any company that has had a net loss of at least 50 employees because of jobs being transferred to employees outside of the United States and any expatriate company (a company that is organized under the laws of another country that is closely related to a company or former company organized in the United States) is, for a period of seven years, ineligible to: 1) receive any income or franchise tax credit or property tax exemption; 2) enter into a contract with the state or a local

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governmental unit for the construction, remodeling, or repair of a public work or building, or for the furnishing of supplies, services, equipment, or material of any kind; and 3) receive any grants or loans from the state or from a local governmental unit. Under the bill, Commerce is required to maintain and update a list of such companies, and to post the list on its Web site. Agencies and local governmental units must review the list before entering into public contracts.

The ineligibility of a company under the bill may be waived or modified if Commerce believes that doing so is necessary to meet a compelling public interest, Commerce submits a written justification to the Department of Administration (DOA) and the Joint Committee on Finance (JCF), and both DOA and JCF approve the waiver. Finally, before entering into a contract with an agency or local governmental unit, a company must submit a declaration that the company is eligible to enter the contract under the bill. A company that knowingly makes a false, material statement in a declaration is guilty of a misdemeanor.

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

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

1           **SECTION 1.** 16.75 (6) (e) of the statutes is amended to read:

2           16.75 **(6)** (e) The governor or his or her designee may waive any requirement  
3 of this subchapter if the governor or his or her designee finds that there exists an  
4 emergency which threatens the public health, safety or welfare and the waiver is  
5 necessary to meet the emergency. The governor or his or her designee shall require  
6 the award of each contract under this paragraph to be made with such competition  
7 as is practicable under the circumstances. The governor or his or her designee shall  
8 file with the department a statement of facts constituting the emergency for each  
9 waiver issued under this paragraph, and a statement of the basis for selection of each  
10 contractor under the emergency procedure. This paragraph does not apply to the  
11 requirement requirements specified in sub. (7) and s. 16.753.

12           **SECTION 2.** 16.753 of the statutes is created to read:

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2           No company whose name is certified by the department of commerce under s. 560.29  
3           (3) and no expatriate company, as defined in s. 560.29 (1), is eligible to enter into any  
4           contract with an agency for the purchase of materials, supplies, equipment, or  
5           contractual services for a period of 7 years beginning with the year in which the  
6           company is required to submit a report under s. 560.29 (2).

7           **SECTION 3.** 16.855 (18) of the statutes is amended to read:

8           16.855 (18) ~~This~~ Except as provided in sub. (23), this section shall not apply  
9           to restoration or reconstruction of the state capitol building, historic structures at the  
10          old world Wisconsin site and at Heritage Hill state park when the department  
11          determines that a waiver of this section would serve the best interests of this state.

12          **SECTION 4.** 16.855 (21) of the statutes is amended to read:

13          16.855 (21) ~~This~~ Except as provided in sub. (23), this section does not apply to  
14          contracts by the department of natural resources for construction work related to  
15          hazardous substance spill response under s. 292.11 or environmental repair under  
16          s. 292.31.

17          **SECTION 5.** 16.855 (22) of the statutes is amended to read:

18          16.855 (22) The provisions of this section, except ~~sub.~~ subs. (10m) and (23), do  
19          not apply to construction work for any project the estimated construction cost of  
20          which does not exceed \$100,000 if the project is constructed in accordance with  
21          policies and procedures prescribed by the building commission under s. 13.48 (29).  
22          If the estimated construction cost of any project is at least \$30,000, and the building  
23          commission elects to utilize the procedures prescribed under s. 13.48 (29) to construct  
24          the project, the department shall provide adequate public notice of the project and

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1 the procedures to be utilized to construct the project on a publicly accessible  
2 computer site.

3 **SECTION 6.** 16.855 (23) of the statutes is created to read:

4 16.855 (23) No company whose name is certified by the department of  
5 commerce under s. 560.29 (3) and no expatriate company, as defined in s. 560.29 (1)  
6 (c), is eligible to enter into any contract with an agency for engineering or  
7 architectural services or for construction work, as defined in s. 16.87 (1) (a) for a  
8 period of 7 years beginning with the year in which the company is required to submit  
9 a report under s. 560.29 (2).

10 **SECTION 7.** 560.29 of the statutes is created to read:

11 **560.29 Companies experiencing job losses and expatriate companies.**

12 (1) DEFINITIONS. In this section:

13 (a) "Agency" has the meaning given in s. 16.70 (1e).

14 (b) "Company" means any organization or enterprise operated for profit,  
15 including a proprietorship, partnership, firm, business trust, joint venture,  
16 syndicate, corporation, limited liability company, or association.

17 (c) "Expatriate company" means an entity that the department determines is  
18 incorporated under the laws of a foreign country, that issues shares for which the  
19 United States is the principal market for public trading, that has no substantial  
20 business activities in its country of incorporation, and that was one of the following:

21 1. Established in connection with a transaction or series of related transactions  
22 pursuant to which the entity directly or indirectly acquired substantially all of the  
23 properties held by a corporation incorporated in the United States or all of the  
24 properties constituting a trade or business of a partnership organized in the United  
25 States or a related partnership not organized in the United States, and immediately

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1 after the acquisition, more than 50 percent of the shares, by vote or value, of the  
2 entity was held by former shareholders of the corporation incorporated in the United  
3 States or by former partners of the partnership organized in the United States or a  
4 related partnership not organized in the United States. For purposes of this  
5 subdivision, any shares sold in a public offering related to the transaction or a series  
6 of transactions is disregarded.

7 2. Established in connection with a transaction or series of related transactions  
8 pursuant to which the entity directly or indirectly acquired substantially all of the  
9 properties held by a corporation incorporated in the United States or all of the  
10 properties constituting a trade or business of a partnership organized in the United  
11 States or a related partnership not organized in the United States, if the acquiring  
12 entity is more than 50 percent owned, by vote or value, by shareholders or partners  
13 who are residents of the United States. For purposes of this subdivision, indirect  
14 acquisition of property includes the acquisition of a share, or any portion thereof, of  
15 the owner of that property.

16 (d) "Local governmental unit" has the meaning given in s. 66.0131 (1) (a).

17 (e) "Public contract" means a contract for the construction, execution, repair,  
18 remodeling, or improvement of a public work or building or for the furnishing of  
19 supplies services, equipment, or material of any kind.

20 **(2) REPORTING.** (a) On or before January 31, 2007, and annually by January  
21 31 thereafter, any company doing business in this state that had a net loss of at least  
22 50 employees in this state during the preceding calendar year shall notify the  
23 department of the loss.

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1 (b) The department shall send to each company that notifies the department  
2 under par. (a) a job relocation survey that shall include, in addition, to any other  
3 information required by the department, all of the following:

4 1. The name and principle place of business of the company.

5 2. Identification of any public contracts that the company has with the state  
6 or a local governmental unit.

7 3. Identification of any grants or loans that the company has received from this  
8 state or a local governmental unit.

9 4. Identification of any tax exemptions or credits that the company claims  
10 under ch. 70 or 71.

11 5. A statement of the number of the company's employees in this state who lost  
12 their jobs in the preceding calendar year.

13 6. A statement of the number of jobs that the company added in this state in  
14 the preceding calendar year.

15 7. A statement of the number of the company's employees in this state who lost  
16 their jobs because the jobs were transferred to employees located outside of the  
17 United States.

18 (c) A company shall complete and return the survey to the department within  
19 30 days of receiving it. A company that fails to respond to the survey is subject to the  
20 penalties under sub. (4) until such time that the survey is completed and returned  
21 to the department.

22 **(3) CERTIFIED LIST.** The department shall maintain a list of companies that are  
23 subject to the penalties under sub. (4) and shall post, and update, that list on its Web  
24 site. Waivers or modifications made under sub. (5) shall be noted on the list and Web  
25 site.

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1           **(4) PENALTIES.** Notwithstanding the provisions of any tax exemption under ch.  
2           70 or tax credit under ch. 71 for which a company would otherwise be eligible, no  
3           company that has had a net loss of at least 50 employees because of jobs being  
4           transferred to employees outside of the United States, as reported under sub. (2) (b)  
5           7., an no expatriate company shall, for a period of 7 years beginning with the year  
6           in which the company is required to report the loss under sub. (2), be eligible to:

7           (a) Receive any tax exemption under ch. 70 or any tax credit under ch. 71.

8           (b) Enter into a public contract with a local governmental unit.

9           (c) Receive any grants or loans from this state or from a local governmental  
10          unit.

11          (d) Enter into a contract for the purchase of materials, supplies, equipment, or  
12          contractual services with any agency.

13          (e) Enter into a contract for engineering or architectural services or for  
14          construction work, as defined in s. 16.87 (1) (a), with any agency.

15          **(5) WAIVERS; MODIFICATIONS.** (a) A waiver or modification of a penalty in sub.  
16          (4) may be granted if the appropriate agency finds that the waiver or modification  
17          of a penalty that would otherwise be imposed is necessary to meet a compelling public  
18          interest, the department concurs, and the conditions of par. (b) are met. A waiver or  
19          modification of a penalty in sub. (4) that would otherwise be imposed on a company  
20          that is a prospective vendor to a local governmental unit may be granted if the  
21          department finds that the waiver or modification is necessary to meet a compelling  
22          public interest and the conditions of par. (b) are met.

23          (b) If the department under par. (a) concurs with an agency or finds that a  
24          waiver or modification request is necessary to meet a compelling public interest, it  
25          shall prepare a detailed opinion to that effect and submit the opinion and the request

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1 to the department of administration and the joint committee on finance. A waiver  
2 or modification request may only be granted under this section if both the  
3 department of administration and the joint committee on finance approve the  
4 request. The department of administration and the joint committee on finance shall  
5 approve or disapprove under this paragraph within 30 days of submission of the  
6 opinion and request.

7 **(6) DECLARATION; MISDEMEANOR FOR FALSE STATEMENTS.** (a) Before entering into  
8 a public contract, all agencies and local governmental units shall review the  
9 department's Web site list described under sub. (3). As a condition of entering into  
10 a public contract with an agency or local governmental unit, a company shall submit  
11 a declaration stating that the company is not on the list under sub. (3).

12 (b) A company that declares as true any material matter in a declaration under  
13 par. (a) that the company knows or has reason to believe is false is guilty of a  
14 misdemeanor.

15 **(7) RULES.** The department shall promulgate rules to implement and  
16 administer this section.

17 **(END)**