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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Labor, Elections and Urban Affairs (SC-LEUA)

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (October/2010)

3-10-08

MEMORANDUM

TO: Robert J. Marchant
Chief Clerk and Director of Operations

FROM: President Fred Risser

DATE: March 10, 2008

RE: Rereferral of Senate Bill 404

Pursuant to Senate Rule 46 (2) (c), I am writing to direct that Senate Bill 404, relating to: making companies that hire illegal aliens ineligible for certain tax exemptions, governmental contracts, grants, and loans, granting rule-making authority, and providing penalties, be withdrawn from the committee on Labor, Elections and Urban Affairs and rereferred to the committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection. I have obtained the consent of the appropriate chairpersons, as indicated by the signatures below.

Senator Fred A. Risser
Senate President

As the chairperson of the committee with jurisdiction over the proposal described above, I consent to the withdrawal of the proposal as described above.

Senator Spencer Coggs
Chair
Senate Committee on Labor, Elections and Urban Affairs

As the chairperson of the committee Senate Organization, I consent to the withdrawal of the proposal as described above.

Senator Russ Decker
Chair
Senate Committee on Organization


FORWARD
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WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR SPENCER COGGS

FROM: Russ Whitesel, Senior Staff Attorney

RE: 2007 Senate Bill 404, Relating to Illegal Aliens

DATE: February 28, 2008

This memorandum, prepared at your request, describes the changes to 2007 Senate Bill 404, relating to illegal aliens and the provisions contained in Senate Amendment 1 to that bill. Senate Amendment 1 was introduced by Senators Breske, Hansen, and Kreitlow on February 21, 2008.

SENATE BILL 404

Under Senate Bill 404, any company that has hired illegal aliens 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 government 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 kinds; and

3. Receive any grants or loans from a local unit of government.

SENATE AMENDMENT 1

Senate Amendment 1 makes two changes in the bill, as follows:

1. Clarifies that the penalties under the bill apply to illegal aliens who are hired "in violation of U.S.C. s. 1324a (a)." This is the applicable federal law governing the hiring of aliens.

2. The penalty sections in the bill include a good faith exemption for employers who have received notice that an employee has used a false or incorrect Social Security number if the employer "**corrects**" the problem described in the notice, in the manner prescribed under

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federal law no later than 30 days after receiving the notice. The amendment requires that the employer "**addresses**" the problem in the manner prescribed under federal law. The amendment deletes the requirement that action be taken within 30 days.

The amendment makes no other changes in the proposed legislation.

If you have any further questions on this matter, please feel free to contact me directly at the Legislative Council staff offices.

RW:jal


FORWARD
E PLURIBUS UNUM

Plotkin, Adam

From: Virginia Martinez [vmartinez@MALDEF.org]
Sent: Tuesday, March 04, 2008 1:27 PM
To: Sen.Coggs
Cc: Sen.Wirch; Sen.Lehman; Sen.Grothman; Sen.Lasee
Subject: SB 404
Attachments: WI-statement in opposition to SB 404.pdf

Senator Coggs, Attached is a brief statement of the Mexican American Legal Defense and Educational Fund in Opposition to SB 404. We'd appreciate it if you could include this statement as part of the testimony regarding SB 404 tomorrow, March 5, 2008, and in the public record for this bill.
Thank you,

Virginia Martinez
Legislative Staff Attorney
Mexican American Legal Defense and Educational Fund
11 East Adams Street, Suite 700
Chicago, IL 60603
(312) 427-0701
vmartinez@maldef.org
www.maldef.org

MALDEF

STATEMENT OF THE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND IN OPPOSITION TO SB 404
March 5, 2008

MALDEF is a national civil rights organization dedicated to protecting the civil rights of Latinos in the United States through advocacy, litigation, and other activities for the past 40 years. Since 1980, MALDEF's Midwest office has worked on behalf of the Latino community including residents of Wisconsin.

MALDEF expresses its strong opposition to SB 404 ("bill"), under which any company which has hired "illegal aliens" 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 government 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 a local government unit. Sanctions begin with the year the company hires an "illegal alien." Any company that has hired an illegal alien is subject to a fine of $10,000 per "illegal alien."

The U.S. Constitution makes immigration a federal responsibility and there are good reasons for that. Localized attempts to control immigration policy threaten to create a hodgepodge of standards across the country, leading to confusion and fueling discrimination. These attempts are fueling xenophobia and discrimination. That discrimination is already being felt by people who "look" or "sound" foreign. Primarily it is affecting Latinos including Puerto Ricans and naturalized citizens who are suspected of being "illegal aliens" even though they are citizens of this country.

Federal law already prohibits employers from knowingly hiring unauthorized aliens. State and local laws that attempt to regulate immigration, concurrently or in contravention to federal policy have been struck down under the doctrine of preemption. *Hines v. Davidowitz,* 312 U.S. 52, 66-7 (1941); *Lozano v. Hazleton*, 496 F.Supp.2d 477 (M.D.Penn. 2007). The bill penalizes employers who hire illegal aliens but does not fully explain how the determination of illegal status will be made. The bill does refer to notices from the federal government that an employee has provided a false or incorrect social security number page 4, lines 17-20. The federal databases, however, have been shown to be full of errors and frequently lead to problems for lawful workers, including U.S. citizens. Reliance on the error-ridden databases of the Social Security Administration (SSA) and the Department of Homeland Security would be unjust. For example, the Systematic Alien Verification for Entitlements (SAVE) has been plagued with problems throughout its 11 year history including problems identified by the Inspector General

of the Department of Human Services in a report in 1995 and a Government Accountability Office report dated October, 2003 that found it was possible to enter a made-up SAVE reference number without ever verifying a person's status.

As reported in the Electronic Privacy Information Center (EPIC) Spotlight on Surveillance, the National Governors Association, the National Conference of State Legislatures and the American Association of Motor Vehicle Administrators found last year that SAVE still has accuracy problems. It noted that it takes up to two months for some verifications. The EPIC recommends that the SAVE system "should not be deployed nationally or its use made mandatory until it many problems are resolved."

More than 72,000 Wisconsin businesses would be affected by this bill. While the fiscal estimates provided by the Division of Executive Budget and Finance of the Department of Administration provide estimates for additional personnel to set up a system to identify companies that are violating the law, it admits that additional resources may be needed to develop comprehensive databases and cannot predict its long-range fiscal implications. The bill gives people a false sense of action when no real progress will be made in addressing the real or perceived immigration issues in Wisconsin.

Sanctions against employers will negatively impact Wisconsin businesses and American workers. Rather than run the risk of being barred from public contracts an employer may choose not hiring anyone who has a Spanish last name, looks foreign or speaks with an accent. Randel K. Johnson, a vice president of the U.S. Chamber of Commerce was quoted by the LA Times in November 28, 2007 as admitting that employers might be discouraged from hiring people who appear foreign-born because of the potential hassle of the verification process. The article noted that almost 10% of foreign-born U.S. citizens processed through the Department of Homeland Security E-Verify program were initially told they were unauthorized to work even though they were legally eligible. It takes time to contest such initial findings and companies just can't afford to wait. Imposing these requirements on employers would be contrary to Wisconsin's efforts to protect its citizens from discrimination.

Measures similar to those proposed in this bill are rarely, if ever, the result of careful analysis of the actual costs and benefits immigrants bring to their communities. Wisconsin's political leaders would make a better investment of their constituents' time and resources by advocating to the United States Congress to engage in comprehensive immigration reform than by jumping on the bandwagon of purported local immigration reform.

For these reasons, MALDEF respectfully urges Wisconsin's leaders to reject SB 404.


FORWARD
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MEMORANDUM

To: Brad Boycks, Wisconsin Builders Association
Jim Boullion, Associated General Contractors of Wisconsin
John Mielke, Associated Builders and Contractors of Wisconsin
John Metcalf, Wisconsin Manufacturers & Commerce

From: Krukowski & Costello, S.C.

Re: Executive Summary – Analysis of 2007 Senate Bill 404, as amended by Senate Amendment 1

Date: March 4, 2008

The following is an Executive Summary of the legal and pragmatic impact of 2007 Senate Bill 404, as amended by Senate Amendment 1.

LEGAL Issues

- The language of Senate Bill 404 will likely be deemed unenforceable based on federal preemption grounds. Specifically, both implied preemption and preemption based on statutory text.

- Implied preemption would likely exist based on the grant in the United States Constitution to the Congress to enact legislation on immigration and the federal government's extensive regulation of the immigration field.

- Preemption based on statutory text would also likely render this legislation unenforceable. Specifically, the Immigration Reform and Control Act states that it preempts "any state of local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit, or refer for a fee for employment, unauthorized aliens."

PRAGMATIC Issues

- Senate Bill 404 would not appear to address the common scenario in which an employer hires an individual with proper documentation but that is not that individual's actual identity.

- The language of Senate Bill 404 does not appear to have any immunity for employers who terminate employees or refuse to hire applicants that cannot "fix" their mismatch information in a timely manner. This policy, although facially neutral, may fall more harshly on specific populations due to flaws in the federal government database and would potentially create liability for employers under Title VII of the Civil Rights Act of 1964, as amended, and the Wisconsin Fair Employment Act.

- In attempting to comply with Senate Bill 404, some employers will be exposed to additional claims under Title VII of the Civil Rights Act of 1964 as amended, the Wisconsin Fair Employment Act, and the Immigration Reform and Control Act. An employer who demands too much verification of the right to work in the United States from an employee or applicant may also face an investigation and/or prosecution from the federal government based on that action.

- Substantial costs related to litigation over the enforceability of this Act are inevitable which may result in certain provisions of the legislation being enjoined on a temporary or permanent basis.

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FORWARD
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MEMORANDUM

To: Brad Boycks, Wisconsin Builders Association
Jim Boullion, Associated General Contractors of Wisconsin
John Mielke, Associated Builders and Contractors of Wisconsin
John Metcalf, Wisconsin Manufacturers & Commerce

From: Krukowski & Costello, S.C.

Re: Analysis of 2007 Senate Bill 404, as amended by Senate Amendment 1

Date: March 4, 2008

You have asked us to comment on the legal impact of the provisions of 2007 Senate Bill 404, as amended by Senate Amendment 1. Our comments on this piece of legislation from a legal and pragmatic standpoint are set forth below.

LEGAL AND PRAGMATIC LEGAL ISSUES WITH SENATE BILL 404

It is fair to say that litigation over Senate Bill 404 is inevitable. Many groups will likely be poised to challenge this legislation if passed.

The probable legal issues and outcomes will be discussed in further detail below. From a pragmatic standpoint though, the legislation will create substantial costs from a litigation viewpoint and cause confusion among employers on how to implement the requirements and how to comply on a going forward basis as the litigation process takes place. It also may encourage employers to weed out employees and applicants that they believe carry a higher risk of being unauthorized to work in the United States based on stereotypes. This practice would potentially expose those employers to liability under Title VII of the Civil Rights Act of 1964, as amended, the Wisconsin Fair Employment Act, and the Immigration Reform and Control Act.

From a legal analysis perspective, many of the pieces of legislation of a similar type to Senate Bill 404 are being challenged on numerous legal grounds around the nation. In general, those challenges, at least relative to Senate Bill 404, would be based on federal preemption, both implied and based on statutory text.

FEDERAL PREEMPTION IN GENERAL

Federal preemption is the legal doctrine that flows from the Supremacy Clause in the United States Constitution. See U.S. Const. art. VI ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or shall be made, under the Authority of the United States, shall be the supreme Law of the Land. ... ."). The doctrine in basic terms holds that, if a federal law (the Constitution, treaty, or statute) is in conflict with a

state statute or local ordinance, the federal law prevails and the state or local law is deemed preempted or unenforceable.

Preemption can take several different forms. The implied preemption concept is based on the argument that Congress when it has enacted a particular piece of legislation, it intended to occupy the entire field that it has addressed with that statute such that any state statute that addresses an issue related to that piece of federal legislation, it is deemed preempted. Examples of this type of preemption arise under the Employee Retirement Income Security Act ("ERISA"), the National Labor Relations Act ("NLRA"), and other typical federal areas like bankruptcy laws, postal laws, and patent laws. See Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996).

Preemption may also arise based on a conflict between the text of a federal statute and a state statute or because the text of the federal law explicitly addresses the preemption of state law. For example, if a federal statute states that an employer cannot hire or employ an individual that is not authorized to work in the United States and a state statute makes it unlawful for an employer to discriminate against individuals based on their ability to lawfully work in the United States, the federal law prevails and preempts the state statute.

IMPLIED PREEMPTION

The implied preemption doctrine in the present context gains its foundation from Article I, Section 8 of the United States Constitution that states that Congress has the power "To establish an uniform Rule of Naturalization." Challenges to similar legislation like Senate Bill 404 argue that this specific grant of power to Congress in the Constitution along with comprehensive federal regulation of the immigration field in general suggests that states and local entities cannot intrude into the immigration field with their own legislation. See Lozano, 496 F. Supp. 2d at 518 n.41.

The language of Senate Bill 404 attempts to side-step that issue by not having the State of Wisconsin make any type of determination of whether an individual is within the United States lawfully. Rather, the bill will punish employers with an additional State of Wisconsin penalty who are found to have violated the federal law by employing individuals who are not authorized to work in the United States. In other words, the bill does not authorize the State of Wisconsin to determine if an employee is or is not authorized in the United States. Rather, the bill's provision appears to be triggered once an employer is subject to sanctions and penalties under federal law for hiring individuals unauthorized to work in the United States.

Other parts of the bill appear to require an employer to take an active role in the process of rooting out employees who might not be authorized to work in the United States. Specifically, the bill mandates a $10,000 fine if the employer hires an individual not authorized to work in the United States. An employer can defend against that charge if it made a good faith determination that the employee was authorized to work in the United States. That defense is disallowed if the employer does not address the problem of a "Social Security Number mismatch" within a period set by federal law.

The bill's attempt to establish additional penalties for employers who employ individuals who not authorized to work in the United States after being determined to have done so, presumably by federal authorities, also will run into the preemption doctrine. This concept is analogous to a United States Supreme Court case involving a former Wisconsin statute that attempted to debar for two years public contractors who had received three prior judicial judgments within five years that it had violated the National Labor Relations Act. See Wisconsin Department of Industry, Labor and Human Relations v. Gould, Inc., 475 U.S. 282 (1986).

In Gould, a business was debarred by the State of Wisconsin for two years after its affiliated companies had been found to have committed three Unfair Labor Practices in violation of the National Labor Relations Act. The state penalty of debarment, which was supplemental to the federal penalty, did not make a determination into whether an unfair labor practice occurred. Rather, it waited for a federal determination and then attached itself as a state-imposed supplemental penalty.

The Gould court acknowledged that a state (and a municipality) can draft and enforce laws that implicate itself as a market participant as opposed to laws that exist based on its police power.[1] The market participant argument, however, did not save the statute at issue in Gould. The Supreme Court held that the state statute was preempted by the National Labor Relations Act.

In Gould, the preemption occurred despite the fact that the state statute did not attempt to make a determination into whether the federal law was violated. Preemption occurred because the state statute created an indirect conflict on the federal government's comprehensive regulation of industrial relations. In essence, it prevented the federal government from deciding what penalties were to attach to certain proscribed conduct because the State of Wisconsin (and several other states had passed similar laws) had decided to enact penalties above and beyond what the federal government had determined the penalty to be.

This same concept also was recently litigated in the Seventh Circuit. See Metropolitan Milwaukee Association of Commerce, 431 F.3d 277 (7th Cir. 2005). The County of Milwaukee had a passed a labor peace ordinance that mandated that entities who contracted with the county had to sign a neutrality agreement (among other requirements) with any union that sought to represent its employees. Ultimately, the Seventh Circuit held the ordinance was not enforceable because it conflicted with the federal regulation of industrial relations.

Although the Gould and the Metropolitan Milwaukee Association of Commerce cases addressed state or local attempts to regulate in the labor relations area and not the concept of immigration regulation, it is probably a distinction without a difference. The federal government is the principal (and arguably the sole) author of laws and regulations on immigration policy and regulation similar to labor relations policy and regulation. The states or municipalities that

[1] When a state is purchasing goods and services as a proprietor (market participant), laws that limit the state's choices or actions in this regard are generally treated differently from a preemption standpoint than when a state is limiting a private employer's action with legislation (*i.e.*, police powers). See Building & Construction Trades Council v. Assoc. Builders & Contractors of Massachusetts, 507 U.S. 218 (1993).

attempt to intrude in that area and add supplemental state penalties onto violations of federal immigration policy (*e.g.*, for employing unauthorized individuals) will likely run into the preemption doctrine like the statute in Gould.

PREEMPTION BASED ON STATUTORY TEXT

Preemption based on statutory text was also mentioned above. Cf. Freightliner Corp. v. Myrick, 514 U.S. 280, 288-90 (1995) (implied preemption and preemption based on specific text can co-exist). Two specific federal statutes bear on this issue. First, 42 U.S.C. § 1981 states that "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens." Second, 8 U.S.C. § 1324a states "the provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens."

The argument based on 42 U.S.C. § 1981 likely has little merit with respect to Senate Bill 404. Because the protection of 42 U.S.C. § 1981 flows to an entity to make or enforce contracts, the only application where § 1981 would appear to be germane is a situation where an unauthorized individual as a sole proprietor wants to contract with the state – an unlikely scenario. See Domino's Pizza, Inc. v. McDonald, 546 U.S. 470 (2006) (holding that only the party who makes or attempts to make a contract like a corporation can bring a suit under 42 U.S.C. § 1981, not a company's shareholders or officers on a personal level).

The argument based on 8 U.S.C. § 1324a bears more directly on the implementation of Senate Bill 404. Bottom line, § 1324a would likely preempt Senate Bill 404, either partially or wholly, by explicitly forbidding local control or penalties for the employment of unauthorized individuals. See Lozano, 496 F. Supp. 2d at 518-19.

MISCELLANEOUS ISSUES

There is also a litigation risk that an employer who demands too much verification documentation or specific documentation from an employee or applicant will face an investigation and/or prosecution from the federal government for those actions. Moreover, there does not appear to be any immunization concept for employers in Senate Bill 404 or the federal regulation that was stayed that would address liability under Title VII of the Civil Rights Act of 1964, as amended, and the Wisconsin Fair Employment Act. For example, if an employer terminates employees that cannot "fix" their mismatch information in a timely manner and this policy, although facially neutral, falls more harshly on Hispanic or female individuals due to mistakes in the Social Security Administration database, the employer may be liable under the above laws for national origin or sex discrimination.

The E-Verify program is not foolproof by most accounts in the media.[2] For example, it has been reported that many mistakes in the database program exist with respect to women who have changed or hyphenated their surnames because of marriage or divorce. Further, the database information on Hispanic individuals is also reported to have an increased likelihood of mistakes.

The E-Verify program has inherent limits as well. If an applicant presents himself with documents that identify him as "Mike Jones" (but is not really Mike Jones) and has a Social Security Number assigned to Mike Jones, the E-Verify program will likely not help in that scenario. Rather, that fact pattern will fall onto the Human Resources individual of the employer to uncover the deceptive conduct of the employee or applicant.

Uncovering that type of deceptive conduct is not easy and is not something a functional Human Resource department is going to be trained to perform. Moreover, that type of deceptive conduct may be more common place than one may think. In fact, one need not look any farther than the headlines from less than three months ago when the Milwaukee Police Department uncovered the fact that one of its officers, with more than five years of service, was not who he said he was (he took the identity of a dead cousin's who was a United States citizen) and was not authorized to work in the United States.

BACKGROUND ON SIMILAR LEGISLATION

As of the present time, virtually every state in the Union has a law on the books or has legislation pending in its legislature that attempts to regulate the immigration issue in the employment context. In addition, many municipalities have also undertaken the effort to regulate in this area. In fact, one of the most watched cases involves the City of Hazleton in Pennsylvania. That municipality enacted an ordinance that penalized employers and landlords that employed or rented to individuals not authorized to be in the United States. See Lozano v. City of Hazelton, 496 F.Supp. 2d 477 (M.D. Pa. 2007).

In Lozano, the American Civil Liberties Union ("ACLU"), on behalf of many named and unnamed City residents, challenged the enforceability of that ordinance based on various legal grounds. The United States District Court for the Middle District of Pennsylvania agreed that the ordinance could not be enforced and issued an Order directing the City to not enforce the ordinance. The City of Hazleton appealed that decision to the United States Court of Appeals for the Third Circuit. That court will likely issue a decision in late Summer or Fall 2008 although, conceivably, the decision may not be issued until next year sometime. An appeal to the United States Supreme Court for the losing party is a strong possibility.

The State of Arizona also recently passed a statute impacting the employment relationship. In a nutshell, it requires employers to use the Unites States Customs and Immigration Services' E-verify program. It penalizes an employer who knowingly or intentionally employs an unauthorized individual by suspending their license to do business in the state for ten (10) days

[2] The E-verify program is an internet-based program that allows participating employers access to a Social Security Administration database of individuals authorized to work in the United States. It has been reported that the database has significant mistakes, which may cause issues for certain populations.

for the first offense and permanent revocation of the license for the second offense. The statute provides an employer with a rebuttable defense to those violations if it used the E-verify program.

That Arizona law was challenged in court recently and the United States District Court for the District of Arizona did not enjoin its enforcement. A few weeks ago, the District Court dismissed the case by holding that the Arizona law avoids preemption under the Immigration Reform and Control Act. Specifically, the Court held that the Arizona law regulates licensing which is explicitly exempted from preemption under the Immigration Reform and Control Act. The matter was appealed to the United States Court of Appeals for the Ninth Circuit last week. Again, a decision may be forthcoming this year although the Court may not rule until next year.

There are many other similar laws being challenged presently in judicial forums throughout the nation. The exact path or paths the courts will take is impossible to predict with any degree of accuracy. Moreover, this issue – local control, not exclusive federal control, over immigration regulations – is surely one that the United States Supreme Court will have to address and issue a nationwide holding in the future unless Congress steps in with detailed legislation.

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State of Wisconsin • DEPARTMENT OF REVENUE

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Jim Doyle
Governor

Roger M. Ervin
Secretary of Revenue

Senate Committee on Labor, Elections and Urban Affairs Committee Hearing, March 5, 2008

SB 404 - Illegal Aliens – Penalty for Hiring (Sen. Breske)

Description of Current Law and Proposed Change

Under the bill, any company that hires an illegal alien is, for a period of seven years, ineligible to receive any property tax exemption under Chapter 70 or any income or franchise tax credit under Chapter 71. Companies that hire an illegal alien would also be barred for a period of seven years from contracting with state agencies or local governments for supplies, services, construction, or repairs, and would be barred from receiving any grants or loans from local governmental units for a period of seven years. Additionally, a company that hires an illegal alien would be subject to a fine of $10,000 for each illegal alien the company hires.

Fairness/Tax Equity

- The tax code is generally understood to be a means to raise revenue, rather than a tool to punish illegal activity.

Impact on Economic Development

- Because it is unknown how many firms currently employ illegal aliens or how many will hire illegal aliens in the future, the effect of the bill on economic development is unknown.

Administrative Impact/Fiscal Effect

While denying income and franchise tax credits would tend to increase tax revenue, data is not available to estimate the fiscal effect of this proposal. Any denial of a property tax exemption would result in a property tax shift from other taxpayers to the affected entities. The Department is unable to determine which businesses would hire illegal aliens. As a result, the Department cannot determine the fiscal effect of denying tax credits or property tax exemptions to those businesses for seven years.

Technical Comments

The Department has the following technical comments with the bill:

- Because the $10,000 penalty for hiring an illegal alien is located in sec. 560, it appears that it is the Department of Commerce (Commerce) that administers the penalty. If this is the case, Commerce should be required to notify the Department of Revenue of persons or entities subject to the penalty so that tax credits can be disallowed.

- In the case of a sole proprietor (e.g., farmer or small business owner) who is subject to the penalty, is it the author's intent that all credits in Chapter 71 that are available to the individual be disallowed or that only those directly related to the farm or business be denied? For example, are credits such as the itemized deduction credit, school property tax credit, married couple credit, earned income credit, credit for tax paid to another state, and homestead credit, disallowed in addition to credits directly related to the farm or business, such as development zone credit, technology zone credit, dairy investment credit, farmland tax relief credit, or farmland preservation credit? This should be clarified.

- The bill provides that if a company hires an illegal alien, it is ineligible for various tax exemptions, credits, public contracts, grants, and loans for a period of seven years beginning with the year in which the company is subject to penalties and sanctions under federal law for hiring an illegal alien. If a company becomes subject to federal penalties and sanctions effective in the middle of the year, for example, on July 15th, when does the seven-year period begin? The bill language could be interpreted to mean the seven-year period begins either on July 15 or on January 1 of that year. For administrative ease, DOR recommends that the seven-year period begin on the date the company is subject to penalties and sanctions under federal law.

- After the seven-year period expires, a company may wish to amend Wisconsin income or franchise tax returns that were filed during the seven-year period in order claim the credits they were unable to claim at the time they filed those returns. If it is not the author's intent to allow taxpayers to amend their tax returns after the seven-year period to claim the credits they were unable to claim when they first filed the returns, DOR recommends the following amendment to proposed sec. 560.29(2)a)1.:

  1. Receive any tax exemption under ch. 70 or any tax credit under ch. 71 <u>that is applicable to a taxable year that begins within seven years of the date the company is subject to penalties and sanctions under federal law for hiring an illegal alien, regardless of the date the company applies for such exemption or credit.</u>

- As drafted, the bill would be effective the day after publication. Is it meant to apply to companies that became subject to federal penalties and sanctions prior to date of enactment but are still within the seven-year period? Or is the intent that that the bill only apply to companies that are subject to federal penalties and sanctions or that receive a notice that an employee has provided a false or incorrect social security after the date of enactment? DOR recommends some clarification.

Contact: Sherrie Gates-Hendrix, (608) 267-1262

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Presented by the Wisconsin Government Accountability Board

as of Monday, March 03, 2008

2007-2008 legislative session

Legislative bills and resolutions

(search for another legislative bill or resolution at the bottom of this page)

Senate Bill 404

making companies that hire illegal aliens ineligible for certain tax exemptions, governmental contracts, grants, and loans, granting rule-making authority, and providing penalties. (FE)

TEXT
sponsors
LBR analysis

STATUS
committee actions and votes
text of amendments

COST & HOURS
of lobbying efforts directed at this proposal

Organization		These organizations have reported lobbying on this proposal:	Place pointer on icon to display comments, click icon to display prior comments		
Profile	Interests		Date Notified	Position	Comments
●	●	Associated Builders and Contractors of Wisconsin Inc	2/12/2008	⬇	
●	●	Associated General Contractors of Greater Milwaukee Inc	2/14/2008	⬇	
●	●	Associated General Contractors of Wisconsin Inc	2/15/2008	⬇	
●	●	Green Bay Area Chamber of Commerce	1/28/2008	⇔	💬
●	●	Independent Business Assn of Wisconsin	2/14/2008	?	
●	●	Mechanical Contractors Association of Wisconsin	2/14/2008	⬇	
●	●	Metropolitan Milwaukee Association of Commerce	2/29/2008	⬇	
●	●	Midwest Food Processors Association Inc	2/8/2008	⬇	
●	●	National Federation of Independent Business	1/31/2008	?	
●	●	Wisconsin Builders Association	1/31/2008	⬇	
●	●	Wisconsin Innkeepers Association	1/28/2008	⇔	
●	●	Wisconsin Manufacturers & Commerce	2/8/2008	⬇	
●	●	Wisconsin Restaurant Association	1/24/2008	⇔	💬
●	●	Wisconsin Underground Contractors Association	2/12/2008	⬇	

Select a legislative proposal and click "go"

House Assembly / Senate

Proposal Type