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Details:

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Senate

(Assembly, Senate or Joint)

### Committee on ... Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection (SC-SBEPTCCP)

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

## Senate

### Record of Committee Proceedings

#### **Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection**

##### **Assembly Bill 2**

Relating to: state procurement of contractual services.

By Representatives Pocan, Zigmunt, Barca, Benedict, Berceau, Bernard Schaber, Black, Clark, Danou, Fields, Grigsby, Hraychuck, Hubler, Jorgensen, Krusick, Mason, Molepske Jr., Nelson, Parisi, Pasch, Pope-Roberts, Radcliffe, Richards, Roys, Seidel, Sheridan, Shilling, Sinicki, Smith, Van Akkeren, A. Williams and Young; cosponsored by Senators Wirch, Coggs, Hansen, Lassa, Lehman, Miller, Robson, Sullivan and Taylor.

January 28, 2009      Referred to Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

April 1, 2009      **PUBLIC HEARING HELD**

Present:    (5)    Senators Wirch, Plale, Holperin, Hopper and Lazich.  
Absent:    (0)    None.

##### Appearances For

- None.

##### Appearances Against

- None.

##### Appearances for Information Only

- None.

##### Registrations For

- None.

##### Registrations Against

- None.

##### Registrations for Information Only

- None.

April 23, 2009      **EXECUTIVE SESSION HELD**

Present:    (5)    Senators Wirch, Plale, Holperin, Hopper and Lazich.

Absent: (0) None.

Moved by Senator Lazich, seconded by Senator Holperin that **Senate Amendment LRBa0227** be recommended for introduction.

Ayes: (5) Senators Wirch, Plale, Holperin, Hopper and Lazich.

Noes: (0) None.

INTRODUCTION OF SENATE AMENDMENT LRBA0227 RECOMMENDED,  
Ayes 5, Noes 0

Moved by Senator Lazich, seconded by Senator Hopper that **Senate Amendment LRBa0227** be recommended for adoption.

Ayes: (2) Senators Hopper and Lazich.

Noes: (3) Senators Wirch, Plale and Holperin.

ADOPTION OF SENATE AMENDMENT LRBA0227 NOT RECOMMENDED,  
Ayes 2, Noes 3

Moved by Senator Plale, seconded by Senator Holperin that **Assembly Bill 2** be recommended for concurrence.

Ayes: (3) Senators Wirch, Plale and Holperin.

Noes: (2) Senators Hopper and Lazich.

CONCURRENCE RECOMMENDED, Ayes 3, Noes 2

Michael Tierney  
Committee Clerk

*Memo basically says WTO issue unsettled.*



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## WISCONSIN LEGISLATIVE COUNCIL

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

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON JOBS, THE ECONOMY, AND SMALL BUSINESS

FROM: Heidi J. Frechette, Staff Attorney

RE: World Trade Organization Government Procurement Agreement Inquiry

DATE: January 27, 2009

At the hearing held by the Assembly Committee on Jobs, the Economy, and Small Business on January 22, 2009, a question was raised as to whether the State of Wisconsin could face penalties under the World Trade Organization Government Procurement Agreement (WTOGPA) if Assembly Bill 2 (AB2) is enacted into law. AB2 requires all contractual services purchased by State of Wisconsin executive branch agencies to be performed within the United States.

In response to the committee discussion of the question raised, this memorandum briefly describes: (1) the threshold value requirements that a procurement must meet in order to be subject to the WTOGPA; and (2) any potential consequences to the State of Wisconsin if it passes a law which conflicts with the WTOGPA. Please note that this memorandum is a brief discussion of a large and complex body of law.

The WTOGPA requires participating countries, such as the United States, to give suppliers from other member countries as favorable a treatment as it would domestic suppliers and to not discriminate among or between foreign suppliers, goods, or services. Twenty-eight countries have voluntarily signed on to the WTOGPA along with 37 U.S. states. The State of Wisconsin is a voluntary signatory to the WTOGPA.

### ***Threshold Value Requirements of the WTOGPA***

In order for the terms of the WTOGPA to apply, a procurement must meet certain threshold requirements. In general, a procurement will be subject to the terms of the WTOGPA if it is greater than or equal to the following 2008-2009 thresholds established by the Office of U.S. Trade Representatives:

- Good and Services: \$528,000
- Construction: \$7,443,000

Certain procurements are exempt from the WTOGPA. For example, "Buy American" restrictions placed on state and local government procurements made with federal grants pursuant to a few federal laws are exempt from the WTOGPA.

Thus, if AB2 is enacted, procurements for goods and services or construction that are greater than or equal to the threshold amounts may be subject to the WTOGPA.

***Applicability of WTOGPA to State Governments and Consequences for Noncompliance***

It is unclear whether states are subject to the WTOGPA absent consent and what the consequences are for noncompliance with the terms of the WTOGPA by a state.

Ultimately, the federal government is the signatory to the WTOGPA and therefore would be held responsible for noncompliance by the states. The World Trade Organization (WTO) and member states monitor the actions of the parties to the WTOGPA, including states. The WTO or member countries will notify the United States if a state law conflicts with the WTOGPA. In response, the federal government may choose to preempt the state law, sue the state government to overturn the state law or withhold federal funds until the state comes into compliance in order to avoid sanctions against the United States by the WTO.

Case law is unsettled on this issue. Lower courts have ruled on whether an individual state can pass procurement laws that give preference to in-state or domestic suppliers, services, and goods, but are split in their findings. The United States Supreme Court had the opportunity to rule on this broad federal preemption issue in *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000), but chose instead to rule on a narrower question of whether the state statute was preempted by a similar federal statute.

Last session, the Wisconsin Senate adopted a bill (Senate Bill 163) which was similar to AB2; however, the Senate bill included an amendment to address the issue of compliance with WTOGPA. The amendment stated that the WTOGPA preempted state regulation and exempted procurements subject to the WTOGPA from the requirement that these services be performed within the United States.

If I can provide further information on this subject, please feel free to contact me at the Legislative Council staff offices.

HJF:jb;ty