

2005 DRAFTING REQUEST

Bill

Received: 11/12/2004

Received By: **jkuesel**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Cowles (608) 266-0484**

By/Representing: **Russ Whitesel - LCS**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact: **Todd Stuart - Sen Cowles' ofc**

Addl. Drafters:

Subject: **State Govt - procurement**

Extra Copies: **Russ Whitesel - LCS - 1**

Submit via email: **YES**

Requester's email: **Sen.Cowles@legis.state.wi.us**

Carbon copy (CC:) to: **Russ.Whitesel@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Contractual service procurements

Instructions:

Per attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 12/02/2004	wjackson 12/06/2004		_____			State
/1			rschlue 12/06/2004	_____	sbasford 12/06/2004		State
/2	jkuesel 12/14/2004	wjackson 12/16/2004	pgreensl 12/16/2004	_____	lemery 12/16/2004	mbarman 01/24/2005	

FE Sent For:

*At
intro.*

<END>

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/?	jkuesel 12/02/2004	wjackson 12/06/2004	12/16 ps	12/16			State
/1	1/2 jkuesel 12/14	1/2 WLJ 12/16	rschluet 12/06/2004	ps	sbasford 12/06/2004		

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12/1	jkuesel						
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Handwritten signature and dates: 12/6, 4, 3

FE Sent For:

<END>

13.093(2)(A)

(A) ANY BILL MAKING AN APPROPRIATION, ANY BILL INCREASING OR DECREASING EXISTING APPROPRIATIONS OR STATE OR GENERAL LOCAL GOVERNMENT FISCAL LIABILITY OR REVENUES, AND ANY BILL THAT MODIFIES AN EXISTING SURCHARGE OR CREATES A NEW SURCHARGE THAT IS IMPOSED UNDER CH. 814, SHALL, BEFORE ANY VOTE IS TAKEN THEREON BY EITHER HOUSE OF THE LEGISLATURE IF THE BILL IS NOT REFERRED TO A STANDING COMMITTEE, OR BEFORE ANY PUBLIC HEARING IS HELD BEFORE ANY STANDING COMMITTEE OR, IF NO PUBLIC HEARING IS HELD, BEFORE ANY VOTE IS TAKEN BY THE COMMITTEE, INCORPORATE A RELIABLE ESTIMATE OF THE ANTICIPATED CHANGE IN APPROPRIATION AUTHORITY OR STATE OR GENERAL LOCAL GOVERNMENT FISCAL LIABILITY OR REVENUES UNDER THE BILL, INCLUDING TO THE EXTENT POSSIBLE A PROJECTION OF SUCH CHANGES IN FUTURE BIENNIA. THE AGENCY SHALL ALSO INDICATE WHETHER THE COSTS OF THE BILL COULD BE REDUCED BY THE USE OF CONTRACTS ISSUED THROUGH COMPETITIVE PROCEDURES. FOR PURPOSES OF THIS PARAGRAPH, A BILL INCREASING OR DECREASING THE LIABILITY OR REVENUES OF THE UNEMPLOYMENT RESERVE FUND IS CONSIDERED TO INCREASE OR DECREASE STATE FISCAL LIABILITY OR REVENUES. EXCEPT AS OTHERWISE PROVIDED BY JOINT RULES OF THE LEGISLATURE OR THIS PARAGRAPH, SUCH ESTIMATES SHALL BE MADE BY THE DEPARTMENT OR AGENCY ADMINISTERING THE APPROPRIATION OR FUND OR COLLECTING THE REVENUE. THE JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS SHALL PREPARE THE FISCAL ESTIMATE WITH RESPECT TO THE PROVISIONS OF ANY BILL REFERRED TO IT WHICH CREATE OR MODIFY ANY SYSTEM FOR, OR MAKE ANY PROVISION FOR, THE RETIREMENT OF OR PAYMENT OF PENSIONS TO PUBLIC OFFICERS OR EMPLOYEES. THE DIRECTOR OF STATE COURTS SHALL PREPARE THE FISCAL ESTIMATE WITH RESPECT TO THE PROVISIONS OF ANY BILL THAT MODIFIES AN EXISTING SURCHARGE OR CREATES A NEW SURCHARGE THAT IS IMPOSED UNDER CH. 814. WHEN A FISCAL ESTIMATE IS PREPARED AFTER THE BILL HAS BEEN INTRODUCED, IT SHALL BE PRINTED AND DISTRIBUTED AS ARE AMENDMENTS.

s. 16.004 (14) IS CREATED TO READ:

16.004(14) RULES ON CONTRACTUAL SERVICE PROCURMENTS. THE DEPARTMENT OF ADMINISTRATION SHALL PROMULGATE RULES ESTABLISHING STANDARDS FOR A UNIFORM COST-BENEFIT ANALYSIS OF PROPOSED CONTRACTUAL SERVICE PROCUREMENTS BY STATE AGENCIES.

(8) THE DEPARTMENT SHALL, ANNUALLY ON OR BEFORE OCTOBER 15, SUBMIT TO THE GOVERNOR, THE JOINT COMMITTEE ON FINANCE, THE JOINT LEGISLATIVE AUDIT COMMITTEE AND THE CHIEF CLERK OF EACH HOUSE OF THE LEGISLATURE FOR DISTRIBUTION TO THE APPROPRIATE STANDING COMMITTEES UNDER S. 13.172 (3), A REPORT CONCERNING THE NUMBER, VALUE AND NATURE OF CONTRACTUAL SERVICE PROCUREMENTS AUTHORIZED FOR EACH AGENCY DURING THE PRECEDING FISCAL YEAR. THE REPORT SHALL ALSO INCLUDE ALL OF THE FOLLOWING FOR THE PRECEDING FISCAL YEAR:

- (A) RECOMMENDATIONS FOR ELIMINATING UNNEEDED CONTRACTUAL SERVICE PROCUREMENTS AND FOR CONSOLIDATION OR REBIDDING EXISTING CONTRACTUAL SERVICE PROCUREMENTS.
- (B) A SUMMARY OF THE COST-BENEFIT ANALYSIS COMPLETED BY STATE AGENCIES IN COMPLIANCE WITH DEPARTMENT RULES PROMULGATED UNDER S. 16.XXX, STATS.
- (C) A LIST OF THE STATE AGENCIES THAT HAVE COMPLETED THE TRAINING REQUIRED TO PREPARE A COST BENEFIT ANALYSIS ON CONTRACTUAL SERVICE PROCUREMENTS.

2005

Date (time) needed

(NOTE)
MON 12/6

LRB - 0796, 1
JTK: WLY:

BILL

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the

statutes; **relating to:** *state contractual service contracting procedures and information and fiscal estimate cost mitigation analyses*

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: **create → anal: → title: → head**

For the subheading, execute: **create → anal: → title: → sub**

For the sub-subheading, execute: **create → anal: → title: → sub-sub**

For the analysis text, in the component bar:

For the text paragraph, execute: **create → anal: → text**

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

SECTION #.

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0796/lins2
JTK.....

Currently, the Department of Administration (DOA) must promulgate, by rule, procedures for DOA and the state agencies to which DOA delegates purchasing authority to use when entering into contractual service contracts. This bill provides that these rules must include a requirement for the agencies to conduct a uniform cost-benefit analysis of each proposed contractual service procurement in accordance with standards prescribed in the rules.

Currently, following the end of each fiscal year, DOA must report to the governor, the Joint Committee on Finance, the Joint Legislative Audit Committee, and the appropriate legislative standing committees concerning state contractual service procurements during ~~that~~ fiscal year. This bill provides that the report shall include a summary of the cost-benefit analyses prepared by state agencies in the preceding fiscal year and recommendations for elimination of unneeded contractual service procurements and for consolidation or resolicitation of existing contractual service procurements.

The bill also provides that each fiscal estimate prepared for a bill ^e must indicate whether any increased costs incurred by the state under the bill can be mitigated through the use of contractual service contracts let in accordance with competitive procedures. Currently, there is no similar requirement.

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

The preceding

SECTION 1. 13.093 (2) (a) of the statutes is amended to read:

13.093 (2) (a) Any bill making an appropriation, any bill increasing or decreasing existing appropriations or state or general local government fiscal liability or revenues, and any bill that modifies an existing surcharge or creates a new surcharge that is imposed under ch. 814, shall, before any vote is taken thereon by either house of the legislature if the bill is not referred to a standing committee, or before any public hearing is held before any standing committee or, if no public hearing is held, before any vote is taken by the committee, incorporate a reliable estimate of the anticipated change in appropriation authority or state or general local government fiscal liability or revenues under the bill, including to the extent possible a projection of such changes in future biennia. The estimate shall also indicate whether any increased costs incurred by the state under the bill can be mitigated through the use of contractual service contracts let in accordance with competitive procedures. For purposes of this paragraph, a bill increasing or decreasing the liability or revenues of the unemployment reserve fund is considered to increase or decrease state fiscal liability or revenues. Except as otherwise provided by joint rules of the legislature or this paragraph, such estimates shall be made by the department or agency administering the appropriation or fund or collecting the revenue. The joint survey committee on retirement systems shall prepare the fiscal estimate with respect to the provisions of any bill referred to it which create or modify any system for, or make any provision for, the retirement of or payment of pensions to public officers or employees. The director of state courts shall prepare the fiscal estimate with respect to the provisions of any bill that

modifies an existing surcharge or creates a new surcharge that is imposed under ch. 814. When a fiscal estimate is prepared after the bill has been introduced, it shall be printed and distributed as are amendments.

History: 1971 c. 17; 1977 c. 29, 317; 1979 c. 34, 283; 1981 c. 20 s. 2n; 1981 c. 27 s. 1; Stats. 1981 s. 13.093; 1983 a. 8, 27; 1987 a. 4; 1989 a. 31; 2001 a. 16; 2003 a. 139.

SECTION 2. 16.705 (2) of the statutes is amended to read:

16.705 (2) The department shall promulgate rules for the procurement of contractual services by the department and its designated agents, including but not limited to the rules prescribing an approval and monitoring processes for contractual service contracts and a requirement for agencies to conduct a uniform cost-benefit analysis of each proposed contractual service procurement in accordance with standards prescribed in the rules. Each officer requesting approval to engage any person to perform contractual services shall submit to the department written justification for such contracting which shall include a description of the contractual services to be procured, justification of need, justification for not contracting with other agencies, a specific description of the scope of contractual services to be performed, and justification for the procurement process if a process other than competitive bidding is to be used. The department may not approve any contract for contractual services unless it is satisfied that the justification for contracting conforms to the requirements of this section and ss. 16.71 to 16.77.

History: 1977 c. 196 s. 31; Stats. 1977 s. 16.705; 1981 c. 20; 1983 a. 27; 1985 a. 29 s. 3200 (1); 1985 a. 332 s. 251 (1); 1987 a. 186; 1989 a. 125; 1999 a. 105; 2003 a. 33 ss. 201, 9160.

SECTION 3. 16.705 (8) of the statutes is renumbered 16.705 (8) (intro.) and amended to read:

16.705 (8) (intro.) The department shall, annually on or before October 15, submit to the governor, the joint committee on finance, the joint legislative audit committee and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3), a report concerning the

number, value and nature of contractual service procurements authorized for each agency during the preceding fiscal year. The report shall also include, with respect to contractual service procurements by agencies for the preceding fiscal year:

History: 1977 c. 196 s. 31; Stats. 1977 s. 16.705; 1981 c. 20; 1983 a. 27; 1985 a. 29 s. 3200 (1); 1985 a. 332 s. 251 (1); 1987 a. 186; 1989 a. 125; 1999 a. 105; 2003 a. 33 ss. 201, 9160.

SECTION 4. 16.705 (8) (a) and (b) of the statutes are created to read:

16.705 (8) (a) A summary of the cost-benefit analyses completed by agencies in compliance with rules promulgated by the department under sub. (2). ✓

(b) Recommendations for elimination of unneeded contractual service procurements and for consolidation or resolicitation of existing contractual service procurements.

SECTION 5. Nonstatutory provisions.

(1) In each of the first 3 ^{annual} reports submitted by the ~~Department of Administration~~ under section 16.705 (8) of the statutes following the effective date of this subsection, the department ^{of administration} shall include a list of the agencies that have completed training required for preparation of cost-benefit analyses for contractual service procurements by the agencies in accordance with rules promulgated by the department ^{of administration}.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0796/1dn

JTK.....

WJ

Senator Cowles:

1. Since the bill resulting from this draft may become law during the middle of the 2005 legislative session, you may wish to make the change to fiscal estimate procedures under s. 13.093 (2) (a), stats, initially applicable to fiscal estimates prepared for the 2007 legislative session.

2. Likewise, given the potential effective date of the bill resulting from this draft, and since it will take some time for DOA to promulgate rules under s.16.705 (2), stats., it would seem that the cost-benefit analyses resulting from these rules could probably not be summarized for purposes of DOA's annual contractual services report under s. 16.705 (8), stats, until the report that is due on October 15, 2007. You may therefore wish to consider an initial applicability for this reporting requirement.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0796/1dn
JTK:wlj:rs

December 6, 2004

Senator Cowles:

1. Since the bill resulting from this draft may become law during the middle of the 2005 legislative session, you may wish to make the change to fiscal estimate procedures under s. 13.093 (2) (a), stats., initially applicable to fiscal estimates prepared for the 2007 legislative session.
2. Likewise, given the potential effective date of the bill resulting from this draft, and since it will take some time for DOA to promulgate rules under s.16.705 (2), stats., it would seem that the cost-benefit analyses resulting from these rules could probably not be summarized for purposes of DOA's annual contractual services report under s. 16.705 (8), stats., until the report that is due on October 15, 2007. You may therefore wish to consider an initial applicability for this reporting requirement.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778



Wanted THU 12/16

LPS: Please check Auto Refs.

2005 BILL

and a requirement for agencies to periodically review the continued appropriateness of contracting under each contractual services agreement

or any state agency to which DOA delegates purchasing authority whenever the services may be performed more efficiently or economically than if they were performed by state employees. This bill directs DOA to prescribe by rule uniform procedures for determining whether services are appropriate for contracting. Currently DOA

(regenerate)

1 AN ACT ~~to renumber and amend 16.705 (8); to amend 13.093 (2) (a) and 16.705~~

2 ~~(2); and to create 16.705 (8) (a) and (b)~~ of the statutes; relating to: state

3 contractual service contracting procedures and information and fiscal estimate

4 cost mitigation analyses

an exemption from and extending ^{for} time limit for emergency rule ^{making authority and providing} procedures

Analysis by the Legislative Reference Bureau

Currently, the Department of Administration (DOA) must promulgate, by rule, procedures for DOA and the state agencies to which DOA delegates purchasing authority to use when entering into contractual service contracts. This bill provides that these rules must include a requirement for the agencies to conduct a uniform cost-benefit analysis of each proposed contractual service procurement in accordance with standards prescribed in the rules.

Currently, following the end of each fiscal year, DOA must report to the governor, the Joint Committee on Finance, the Joint Legislative Audit Committee, and the appropriate legislative standing committees concerning state contractual service procurements during the preceding fiscal year. This bill provides that the report shall include a summary of the cost-benefit analyses prepared by state agencies in the preceding fiscal year and recommendations for elimination of unneeded contractual service procurements and for consolidation or resolicitation of existing contractual service procurements.

The bill also provides that each fiscal estimate prepared for a bill must indicate whether any increased costs incurred by the state under the bill can be mitigated

BILL

through the use of contractual service contracts let in accordance with competitive procedures. Currently, there is no similar requirement.

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. 13.093 (2) (a) of the statutes is amended to read:

2 13.093 (2) (a) Any bill making an appropriation, any bill increasing or
3 decreasing existing appropriations or state or general local government fiscal
4 liability or revenues, and any bill that modifies an existing surcharge or creates a
5 new surcharge that is imposed under ch. 814, shall, before any vote is taken thereon
6 by either house of the legislature if the bill is not referred to a standing committee,
7 or before any public hearing is held before any standing committee or, if no public
8 hearing is held, before any vote is taken by the committee, incorporate a reliable
9 estimate of the anticipated change in appropriation authority or state or general
10 local government fiscal liability or revenues under the bill, including to the extent
11 possible a projection of such changes in future biennia. The estimate shall also
12 indicate whether any increased costs incurred by the state under the bill can be
13 mitigated though the use of contractual service contracts let in accordance with
14 competitive procedures. For purposes of this paragraph, a bill increasing or
15 decreasing the liability or revenues of the unemployment reserve fund is considered
16 to increase or decrease state fiscal liability or revenues. Except as otherwise
17 provided by joint rules of the legislature or this paragraph, such estimates shall be
18 made by the department or agency administering the appropriation or fund or
19 collecting the revenue. The joint survey committee on retirement systems shall
20 prepare the fiscal estimate with respect to the provisions of any bill referred to it

BILL

1 which create or modify any system for, or make any provision for, the retirement of
2 or payment of pensions to public officers or employees. The director of state courts
3 shall prepare the fiscal estimate with respect to the provisions of any bill that
4 modifies an existing surcharge or creates a new surcharge that is imposed under ch.
5 814. When a fiscal estimate is prepared after the bill has been introduced, it shall
6 be printed and distributed as are amendments.

INS ✓
3-6

7 **SECTION 2.** 16.705 (2) of the statutes is amended to read:

for agencies

8 16.705 (2) The department shall promulgate rules for the procurement of
9 contractual services by the department and its designated agents, including but not
10 limited to the rules prescribing approval and monitoring processes for contractual
11 service contracts ~~and a requirement for agencies to conduct a uniform cost-benefit~~
12 analysis of each proposed contractual service procurement in accordance with
13 standards prescribed in the rules. ~~Each officer requesting approval to engage any~~
14 person to perform contractual services shall submit to the department ^{continued} written ^{appropriateness}
15 justification for such contracting which shall include a description of the contractual ^{of}
16 services to be procured, justification of need, justification for not contracting with ^{contracting}
17 other agencies, a specific description of the scope of contractual services to be ^{under}
18 performed, and justification for the procurement process if a process other than ^{each}
19 competitive bidding is to be used. The department may not approve any contract for ^{contractual}
20 contractual services unless it is satisfied that the justification for contracting ^{service}
21 conforms to the requirements of this section and ss. 16.71 to 16.77. ^{agreement}

22 **SECTION 3.** 16.705 (8) of the statutes is renumbered 16.705 (8) (intro.) and
23 amended to read:

24 16.705 (8) (intro.) The department shall, annually on or before October 15,
25 submit to the governor, the joint committee on finance, the joint legislative audit

BILL

SECTION 3

1 committee and the chief clerk of each house of the legislature for distribution to the
 2 appropriate standing committees under s. 13.172 (3), a report concerning the
 3 number, value and nature of contractual service procurements authorized for each
 4 agency during the preceding fiscal year. The report shall also include, with respect
 5 to contractual service procurements by agencies for the preceding fiscal year:

6 **SECTION 4.** 16.705 (8) (a) and (b) of the statutes are created to read:

7 16.705 (8) (a) A summary of the cost-benefit analyses completed by agencies
 8 in compliance with rules promulgated by the department under sub. (2).

9 (b) Recommendations for elimination of unneeded contractual service
 10 procurements and for consolidation or resolicitation of existing contractual service
 11 procurements.

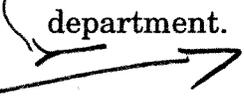
[X] AR. (A)

12 **SECTION 4. Nonstatutory provisions.**

(3) REPORTS ON INITIAL TRAINING

13 (1) In each of the first 3 annual reports submitted by the department of
 14 administration under section 16.705 (8) of the statutes following the effective date
 15 of this subsection, the department shall include a list of the agencies that have
 16 completed training required for preparation of cost-benefit analyses for contractual
 17 service procurements by the agencies in accordance with rules promulgated by the
 18 department.

twS 16 ✓
 4-17
 twS 19 ✓
 4-18 ✓



(END)

JWS 4-17 ✓

~~DM
ex 7.15 (5)~~

③ EMERGENCY RULES ON
CONTRACTUAL SERVICE
PROCUREMENT

16.705
NonSTATS
A.R. (A)

Administration affected

as emergency rules, which shall be

~~DEFINITION OF NEEDY PERSON. Using the procedure under section 227.24 of the statutes, the department of workforce development shall promulgate the rule required under section 49.1980 (1) of the statutes, as created by this act, for the period before the effective date of the permanent rule promulgated under section 49.1980 (1) (b) of the statutes, as created by this act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.~~

in effect

16.705

affected

no later than the first day of the 6th month beginning after the effective date of this subsection,

Basford, Sarah

From: Stuart, Todd
Sent: Monday, January 24, 2005 11:33 AM
To: Basford, Sarah
Subject: RE: Contracting reform -- LRB -0796/2 (attached)

Please jacket/prepare this bill for introduction.

-----Original Message-----

From: Basford, Sarah
Sent: Monday, January 10, 2005 1:51 PM
To: Stuart, Todd
Subject: LRB -0796/2 (attached)



05-0796/2

Sarah Basford
Program Assistant
State of Wisconsin
Legislative Reference Bureau
PH: (608) 266-3561/FAX: (608) 264-6948
sarah.basford@legis.state.wi.us