2009 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB447)

Received: **03/16/2010**

Received By: **chanaman**

Wanted: **As time permits**

Companion to LRB: **s0357**

For: **Julie Lassa (608) 266-3123**

By/Representing: **Danielle**

May Contact:

Drafter: **chanaman**

Subject: **State Govt - procurement**

Addl. Drafters: **agary**
rchampag

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lassa@legis.wisconsin.gov**

Carbon copy (CC:) to: **darin.renner@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Engross amendments into SB447

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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/P2	chanaman 03/23/2010	kfollett 03/23/2010	mduchek 03/23/2010	_____ _____	cduerst 03/23/2010		

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/P4	chanaman 03/31/2010	bkraft 03/31/2010	phenry 03/30/2010	_____ _____	lparisi 03/30/2010		
/1			rschluet 03/31/2010	_____ _____	sbasford 03/31/2010	sbasford 03/31/2010	

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/P4	/1 bjk 3/31		phenry 03/30/2010	_____ _____	lparisi 03/30/2010		

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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		/P4 bjk 3/24	03/23/2010	_____	03/23/2010		

FE Sent For:

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3/23ph 3/23 ph/nb

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Received By: **chanaman**

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Companion to LRB:

For: **Legislative Reference Bureau**

By/Representing:

May Contact:

Drafter: **chanaman**

Subject: **State Govt - procurement**

Addl. Drafters:

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

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See attached

Drafting History:

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/?	chanaman		3/17 ph	3/17 ph mb			

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/?	chanaman	/P1 nwn 3/17					

FE Sent For:

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State of Wisconsin
2009 - 2010 LEGISLATURE

S0345/P1
LRB-3274/3
RAC/CMH/ARG:bjk:rs
nwn

SSA to

2009 SENATE BILL 447

Today

January 7, 2010 - Introduced by Senators LASSA, CARPENTER, COGGS, DARLING, HANSEN, HOLPERIN, KREITLOW, LEHMAN, RISSER, TAYLOR, VINEHOUT and WIRCH, cosponsored by Representatives JORGENSEN, BARCA, MASON, ROYS, VRUWINK, BERCEAU, CULLEN, HILGENBERG, HIXSON, MILROY, MOLEPSKE JR., PASCH, POCAN, POPE-ROBERTS, SMITH, TURNER and ZEPNICK. Referred to Committee on Ethics Reform and Government Operations.

Regen

AN ACT ***to renumber and amend*** 16.705 (1), 16.705 (2), 16.705 (3) and 16.705 (6); ***to amend*** 16.705 (7), 16.705 (8) (a), 23.41 (5), 25.18 (1) (a), 25.18 (1) (f), 25.18 (1) (m), 84.01 (13), 84.06 (2) (a), 84.06 (3), 84.06 (4), 85.015, 102.81 (2), 165.08, 165.25 (11), 221.0903 (4) (b), 801.02 (1), 803.09 (1) and (2), 804.01 (2) (intro.), 805.04 (2m) and 893.981; and ***to create*** 16.42 (1) (h), 16.46 (10), 16.705 (1) (a) 3., (b) and (c), 16.705 (2) (a) 3. and 4., (b) and (c), 16.705 (3) (am) 4., 16.705 (3) (bm), 16.705 (4), 16.705 (5g), (5m) and (5r), 16.705 (6) (a), 16.705 (9), 16.75 (1) (a) 4., 16.771, 16.871, 20.932, 66.0902 and 84.06 (13) of the statutes; **relating to:** state contractual services and false claims submitted to state and local governments, requiring the exercise of rule-making authority, and providing penalties.

Analysis by the Legislative Reference Bureau

Currently, the Department of Administration (DOA) or any state agency to which DOA delegates purchasing authority may contract for services if the services can be performed more efficiently or economically by contract than by state employees. This bill allows contracting for services if at least two of the following

three conditions are met: 1) The services may be performed more economically by contract than by state employees; 2) When considering expertise, the services can be performed more efficiently by contract than by use of current full-time state positions; or 3) When considering timeliness, the services can be performed more efficiently by contract than by state employees. Currently, under rules promulgated by DOA, certain persons aggrieved by a solicitation for, or an award of, a contract have five days from the solicitation or award to file a notice of intent to protest with the agency soliciting the services or awarding the contract and ten days to serve that agency with the written protest. This bill extends the time to file a notice of intent to protest to seven working days and the time to file a protest to 12 working days.

Under current law, if a state agency enters into or renews a contract for services that involves an estimated expenditure of more than $25,000, the agency must conduct either a uniform cost-benefit analysis, for a new contract, or a continued appropriateness review, for a contract renewal. This bill requires a cost-benefit analysis or continued appropriateness review to consider all relevant costs including salaries and benefits, training requirements, liability insurance, overhead, facility costs, and taxes. Under this bill, no cost-benefit analysis may be shown to any bidder until a letter of intent to contract has been issued. This bill generally requires that, if a contract is for more than $25,000, any expenditures of the contractor that exceed the bid by more than 10 percent may be paid only if the secretary of administration approves payment of the increased amount and submits to the Joint Committee on Finance (JCF) his or her rationale for approval. In addition, this bill requires DOA to review each cost-benefit analysis or continued appropriateness review and certify them as accurate, and requires each contracting agency to perform periodic audits on its cost-benefit analyses and continued appropriateness reviews and on its subsequent contracts.

The bill requires the Division of Legal Services in DOA to develop standard performance measures, as well as benchmark indicators, to evaluate services performed by contract for a state agency and to determine what actions taken by the contractor would result in the state agency recovering the expenditures it paid to the contractor.

Under current law, if a state agency for which services are performed concludes that the services were unsatisfactory, the agency must file an evaluation with DOA, and DOA must ensure that future contracts are not awarded to contractors whose past performance was unsatisfactory. This bill adds that a state agency must file an evaluation with DOA if the contractual services are unsatisfactory according to the standard performance measures or benchmark indicators developed by the Division of Legal Services or if the state agency recovers expenditures from the contractor under the guidelines developed by the Division of Legal Services.

Currently, if a contractor or vendor does business with this state or a local government, the terms of the contract or order govern the performance of, and the price to be paid to, the contractor or vendor. If the contractor or vendor claims payment for materials, supplies, equipment, or services that are not provided in accordance with the contract or order, or at a price that is different from the price specified in the contract or order, the state or a local government has a remedy

against the contractor or vendor for breach of contract. If the contractor or vendor is asked to swear to the truth of a claim for payment and the claim is false, the contractor or vendor may be prosecuted for false swearing. Currently, except with regard to medical assistance, a private person has no means to recover, on behalf of the state, damages sustained by the state as a result of a fraud committed against the state.

This bill provides that whoever knowingly presents or causes to be presented a false claim under any contract or order for materials, supplies, equipment, or services to be provided to a state agency is subject to a forfeiture (civil penalty) of not less than $5,000 nor more than $10,000, plus three times the amount of the damages that were sustained by the state or would have been sustained by the state, whichever is greater, as a result of the false claim. The bill permits the attorney general to bring an action to recover any forfeiture for which a contractor or vendor is liable as a result of a false claim submitted to a state agency. This bill contains similar provisions that apply to local governmental units.

The bill creates separate prohibitions against state contractors, grantees, vendors, and other recipients of state resources who knowingly commit certain fraudulent acts against the state. The bill makes these persons liable for treble the amount of damages sustained by the state resulting from such acts and imposes additional forfeitures of not less than $5,000 nor more than $10,000 for each violation. The bill permits the attorney general to pursue an alternate remedy, such as an administrative remedy, against an alleged offender in lieu of an action in court. With certain exceptions, the bill provides that a person who brings an action on behalf of the state is entitled to receive his or her reasonable expenses of bringing the action, including his or her costs and reasonable, actual attorney fees, which are assessed against the defendant.

The bill entitles an employee to all relief to make the employee whole if the employee is discriminated against by an employer as a result of lawful actions the employee took to further the investigation of any act of fraud, as defined in the bill, the employer committed against the state. Under the bill, the relief may include reinstatement and double back pay with interest from the time of any discharge to the time of reinstatement. The bill also permits the employee to recover any costs, including reasonable, actual attorney fees, from his or her employer.

This bill also does all of the following relating to state contracts:

1. Requires executive branch state agencies to submit to DOA and the Legislative Fiscal Bureau, by September 15 of the even-numbered year, information on the number of contracted positions, including the number of service hours and recurring service rate payments, providing services for the agency that are paid from the agency's base level funding and an identification of the appropriation or appropriations used to fund the contracted positions; the total amount of agency base level funding used to pay for the contracted positions; and the amount of funding requested for contracted positions and an identification of the appropriation or appropriations that will be used to fund the contracted positions.

2. Requires the secretary of administration to include in the biennial budget report all of the information specified in Item 1.

3. Provides that if in any fiscal year an executive branch agency is prohibited from hiring employees to fill vacant positions or its employees are required to serve an unpaid leave of absence, the agency may not enter into, renew, or extend any contractual services contracts with private contractors or consultants for the remainder of that fiscal year for the performance of services of agency employees who would have performed the services had they been hired or had they not have been required to take an unpaid leave of absence. This provision, however, does not apply to certain contracts of the Office of the State Public Defender, as well as certain contractual services contracts funded with federal economic stimulus funds. The bill further provides that an agency may submit a written request to the JCF to exempt an agency with respect to a specific contractual services contract. If the cochairpersons of JCF do not notify the agency within 14 working days after the date of the agency's submittal that JCF intends to schedule a meeting to review the request, approval of the request is granted. If, within 14 working days after the date of the agency's request submittal, the cochairpersons notify the agency that JCF intends to schedule a meeting to review the request, the request may be granted only as approved by JCF.

The bill also requires the Department of Transportation (DOT), not a contractor, to conduct all tests of concrete thickness on its highway improvement projects. Under the bill, DOT must also submit a report to JCF containing recommendations on actions that DOT and local governments can take to improve the efficiency, cost-effectiveness, and timeliness of local road construction projects and proposed legislative changes to implement these recommendations.

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:

SECTION 1. 16.42 (1) (h) of the statutes is created to read:

16.42 **(1)** (h) 1. The total amount of contracted positions, including the number of service hours and recurring service rate payments, providing services for the agency that are paid from the agency's base level funding and an identification of the appropriation or appropriations used to fund the contract expenditures.

2. The total amount of agency base level funding used to pay for the contracted positions under subd. 1.

3. The amount of funding requested for contracted positions identified under subd. 1 and an identification of the appropriation or appropriations that will be used to fund the contracted positions.

SECTION 2. 16.46 (10) of the statutes is created to read:

16.46 **(10)** (a) A statement of the number of contracted positions providing services for each state agency that are paid from the agency's base level funding and an identification of the appropriation or appropriations used to fund the contracted positions.

(b) A statement of the total amount of each state agency's base level funding used to pay for the contracted positions.

(c) A statement of the amount of funding requested by state agencies for contracted positions and an identification of the appropriation or appropriations that will be used to fund the contracted positions.

SECTION 3. 16.705 (1) of the statutes is renumbered 16.705 (1) (a) (intro.) and amended to read:

16.705 **(1)** (a) (intro.) The department or its agents may contract for services ~~which~~ if at least 2 of the following conditions apply:

1. The services can be performed more economically ~~or~~ by contract.

2. When considering expertise of the current full-time positions, whether filled or vacant, the services can be performed more efficiently by ~~such~~ contract than by use of employees in those positions.

(d) The department shall, by rule, prescribe uniform procedures for determining whether services are appropriate for contracting under this subsection.

SECTION 4. 16.705 (1) (a) 3., (b) and (c) of the statutes are created to read:

16.705 **(1)** (a) 3. When considering timeliness of delivery, the services can be performed more efficiently by contract.

(b) Notwithstanding par. (a), the department or its agents may contract for any services if the contract will be for a period that is not more than one year and if the contract is not eligible for renewal.

(c) No contract under this section may be automatically renewed.

SECTION 5. 16.705 (2) of the statutes is renumbered 16.705 (2) (a) (intro.) and amended to read:

16.705 **(2)** (a) (intro.) The department shall promulgate rules for the procurement of contractual services by the department and its designated agents, including but not limited to ~~rules~~ the following:

1. Rules prescribing approval and monitoring processes for contractual service contracts.

2. Except as provided in par. (b), a requirement for agencies to conduct a uniform cost-benefit analysis of each proposed contractual service procurement involving an estimated expenditure of more than ~~$25,000~~ $50,000 in accordance with standards prescribed in the rules, and, except as provided in par. (b), a requirement for agencies to review periodically, and before any renewal, the continued appropriateness of contracting under each contractual services agreement involving an estimated expenditure of more than ~~$25,000~~. The rules shall require the cost-benefit analysis or continued appropriateness review to compare the costs of using a current employee who is providing, or who would provide, the service, or a similarly situated employee if the current position is vacant, to the costs of using an employee under a contract and shall require the comparison to include all relevant costs including the salary and fringe benefit costs, costs of any training that will be

necessary to fulfill the task, materials, inspections, unemployment insurance, transitional costs, liability insurance, overhead, facility costs, taxes, and other incidental costs. plain

(d) 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. Ins SA1-1

SECTION 6. 16.705 (2) (a) 3. and 4., (b) and (c) of the statutes are created to read:

16.705 **(2)** (a) 3. A requirement that each agency preparing a cost-benefit analysis or continued appropriateness review submit the analysis or review to the department for certification of accuracy.

4. A requirement that each agency that contracts for services under this section perform periodic audits on cost-benefit analyses or continued appropriateness reviews and contracts that required a cost-benefit analysis or continued appropriateness review.

(b) A cost-benefit analysis or continued appropriateness review is not required for services that federal or state law requires to be performed by contract; services that are incidental to the purchase of a commodity; services that a state employee may not or does not perform; or services that must be provided per a contract, license,

or warranty by the original equipment manufacturer or publisher unless the contract, license, or warranty has expired or is no longer valid.

(c) 1. Neither a cost-benefit analysis nor a continued appropriateness review may be conducted by contract.

2. A cost-benefit analysis may not be shown to a bidder prior to the issuance of a letter of intent to contract.

SECTION 7. 16.705 (3) of the statutes is renumbered 16.705 (3) (am), and 16.705 (3) (am) (intro.), 1. and 2., as renumbered, are amended to read:

16.705 **(3)** (am) (intro.) The director of the office of state employment relations, prior to award, under conditions established by rule of the department, shall review contracts for contractual services in order to ensure that agencies do all of the following:

1. Properly utilize the services of state employees;.

2. Evaluate the feasibility of using limited term appointments prior to entering into a contract for contractual services; and.

SECTION 8. 16.705 (3) (am) 4. of the statutes is created to read:

16.705 **(3)** (am) 4. Notify all representatives of interested collective bargaining units under subch. V of ch. 111 by providing them with a copy of all documents soliciting bids or proposals.

SECTION 9. 16.705 (3) (bm) of the statutes is created to read:

16.705 **(3)** (bm) The director of the office of state employment relations, after the issuance of a letter of intent to contract, under conditions established by rule of the department, shall review contracts for contractual services in order to ensure that agencies have notified all representatives of interested collective bargaining

units under subch. V of ch. 111 by providing them with a copy of the letter of intent to contract.

SECTION 10. 16.705 (4) of the statutes is created to read:

16.705 **(4)** Any person submitting a bid or proposal, or any representative of an interested collective bargaining unit under subch. V of ch. 111, that is aggrieved by a solicitation for bids or by a letter of intent to contract may protest to the agency that solicited or awarded the contractual services. The protesting party shall file a written notice of intent to protest with the agency that solicited or awarded the contractual services within 7 working days after the solicitation or the letter, whichever is appropriate, and shall serve a written protest within 12 working days after issuance of the solicitation or the letter, whichever is appropriate.

SECTION 11. 16.705 (5g), (5m) and (5r) of the statutes are created to read:

16.705 **(5g)** All contracts for contractual services must provide notice of the rules promulgated by the division of legal services under sub. (5m) (a) and of the requirements under sub. (5r).

(5m) The division of legal services shall promulgate rules on all of the following:

(a) Actions by the person performing the contractual services that would result in the agency for which contractual services are performed recovering any expenditures for those contractual services that the agency paid to the person performing the contractual services.

(b) Standard performance measures, including quantifiable benchmark indicators, to evaluate persons performing contractual services.

(5r) (a) 1. If the cost of the contractual services exceeds $25,000, any expenditures of the person performing the contractual services that exceed its

Ins SA1-6

original bid by 10 percent or more may not be paid unless the secretary approves payment of the increased amount and provides, in writing, to the joint committee on finance his or her rationale for the approval.

2. Subdivision 1. does not apply to contractual services purchased for the University of Wisconsin System, or for any University of Wisconsin System campus or institution, if the contractual services are for research or instructional purposes, as determined by the University of Wisconsin System or the campus or institution, whichever is appropriate.

(b) No person performing contractual services under this section may provide any salary increase if the salary increase would result in greater expenditures for the agency for which the contractual services are performed than the amounts specified in the original bid. This restriction under this paragraph on salary increases does not apply if the salary increase is in accordance with the terms of a collective bargaining agreement.

SECTION 12. 16.705 (6) of the statutes is renumbered 16.705 (6) (b) and amended to read:

16.705 **(6)** (b) If the agency for which contractual services are performed under a contractual services agreement concludes under par. (a) that the performance was unsatisfactory, recovers expenditures because the contractor's actions were listed in the rules developed under sub. (5m) (a), or concludes that the performance was unsatisfactory based on factors the agency considers, the agency shall file with the department an evaluation ~~of~~ stating that the contractor's performance was unsatisfactory within 60 days after the fulfillment of the agreement. The evaluation shall be in such form as the secretary may require.

SECTION 13. 16.705 (6) (a) of the statutes is created to read:

16.705 **(6)** (a) An agency for which contractual services are performed under a contractual services agreement shall evaluate the contractual services using the standard performance measures and benchmark indicators created under sub. (5m) (b). No contract may be renewed until the agency completes the evaluation.

SECTION 14. 16.705 (7) of the statutes is amended to read:

16.705 **(7)** The department shall review evaluations submitted under sub. (6) (b) and promulgate rules prescribing procedures to assure that future contracts for contractual services are not awarded to contractors whose past performance is found to be unsatisfactory, to the extent feasible.

SECTION 15. 16.705 (8) (a) of the statutes is amended 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) (a).

Ins 3A1-7

SECTION 16. 16.705 (9) of the statutes is created to read:

16.705 **(9)** (a) In this subsection, "federal economic stimulus funds" means federal moneys received by the state, pursuant to federal legislation enacted during the 111th Congress for the purpose of reviving the economy of the United States.

(b) Except as provided in pars. (c) and (d), if in any fiscal year an agency in the executive branch is prohibited from hiring employees to fill vacant positions or its employees are required to serve an unpaid leave of absence, the agency may not enter into, renew, or extend any contractual services contracts with private contractors or consultants for the remainder of that fiscal year for the performance of services of agency employees who would have performed the services had they been hired or had they not have been required to take an unpaid leave of absence.

(c) Paragraph (b) shall not apply to contractual services contracts that are funded with federal economic stimulus funds and the secretary determines that any

deadlines imposed by the federal government on the expenditure of the federal economic stimulus funds cannot be met without an agency's entering into, renewing, or extending a contractual services contract or a cost-benefit analysis is conducted that demonstrates that a contractual services contract would be more cost effective and efficient than having state employees perform the services.

(cm) Paragraph (b) shall not apply to contracts entered into, renewed, or extended under s. 977.08.

(d) An agency in the executive branch may submit a written request to the joint committee on finance to have par. (b) not apply to the agency with respect to a specific contractual services contract. If the cochairpersons of the committee do not notify the agency within 14 working days after the date of the agency's submittal that the committee intends to schedule a meeting to review the request, approval of the request is granted. If, within 14 working days after the date of the agency's request submittal, the cochairpersons of the committee notify the agency that the committee intends to schedule a meeting to review the request, the request may be granted only as approved by the committee.

SECTION 17. 16.75 (1) (a) 4. of the statutes is created to read:

16.75 **(1)** (a) 4. The contracting agency shall electronically send the successful bidder a letter of intent to contract and shall send electronic copies of the letter to all other bidders.

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SECTION 18. 16.771 of the statutes is created to read:

16.771 False claims. Whoever knowingly presents or causes to be presented a false claim for payment under any contract or order for materials, supplies, equipment, or contractual services to be provided to an agency shall forfeit not less than $5,000 nor more than $10,000, plus 3 times the amount of the damages that

were sustained by the state or would have been sustained by the state, whichever is greater, as a result of the false claim. The attorney general may bring an action on behalf of the state to recover any forfeiture incurred under this section.

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SECTION 19. 16.871 of the statutes is created to read:

16.871 False claims. (1) In this section:

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

(b) "Construction work" has the meaning given in s. 16.87 (1) (a).

(c) "Limited trades work" has the meaning given in s. 16.70 (7).

(2) Whoever knowingly presents or causes to be presented a false claim under any contract for construction work or limited trades work, or for engineering or architectural services, to be provided to any agency shall forfeit not less than $5,000 nor more than $10,000, plus 3 times the amount of the damages that were sustained by the state or would have been sustained by the state, whichever is greater, as a result of the false claim. The attorney general may bring an action on behalf of the state to recover any forfeiture incurred under this subsection.

SECTION 20. 20.932 of the statutes is created to read:

20.932 False claims; actions by or on behalf of state. (1) In this section:

(a) "Authority" has the meaning given in s. 16.70 (2).

(b) "Claim" includes any request or demand for money, property, or services made to any officer, employee, or agent of this state, or to any contractor, grantee, or other recipient, whether or not under contract, if any portion of the money, property, or services that are requested or demanded is derived from state resources, or if the state is obligated to reimburse the contractor, grantee, or other recipient for any portion of the money, property, or services that are requested or demanded. "Claim"

does not include any request or demand for medical assistance described under s. 20.931 (1) (b).

(c) "Employer" includes all agencies and authorities.

(d) "Knowingly" has the meaning given in s. 20.931 (1) (d).

(e) "Proceeds" has the meaning given in s. 20.931 (1) (e).

(f) "State public official" has the meaning given in s. 19.42 (14).

(2) Except as provided in subs. (3) and (4), any person who does any of the following is liable to this state for 3 times the amount of the damages sustained by this state because of the actions of the person, and shall forfeit not less than $5,000 nor more than $10,000 for each violation:

(a) Knowingly presents or causes to be presented to any officer, employee, or agent of this state, or to any contractor, grantee, or other recipient of state resources, a false claim for payment or approval.

(b) Knowingly makes, uses, or causes to be made or used a false record or statement to obtain approval or payment of a false claim.

(c) Conspires to defraud this state by obtaining allowance or payment of a false claim, or by knowingly making or using, or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to this state.

(d) Has possession, custody, or control of property used or to be used by this state and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt.

(e) Being authorized to make or deliver a document certifying receipt of property that is used or to be used by this state, knowingly makes or delivers a receipt that falsely represents the property that is used or to be used.

(f) Knowingly buys or receives as a pledge for payment of an obligation or debt for this state property from any person who lawfully may not sell or pledge the property.

(g) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease any obligation to pay or transmit money or property to this state.

(h) Is a beneficiary of the submission of a false claim to any officer, employee, or agent of this state, or to any contractor, grantee, or other recipient of state resources, knows that the claim is false, and fails to disclose the false claim to this state within a reasonable time after the person becomes aware that the claim is false.

(3) Except as provided in sub. (4), the court may assess against a person who violates sub. (2) not less than 2 nor more than 3 times the amount of the damages sustained by the state because of the acts of the person, and may not assess any forfeiture, if the court finds all of the following:

(a) The person who commits the acts furnished the attorney general with all information known to the person about the acts within 30 days after the date on which the person obtained the information.

(b) The person fully cooperated with any investigation of the acts by this state.

(c) At the time that the person furnished the attorney general with information concerning the acts, no criminal prosecution or civil or administrative enforcement action had been commenced with respect to any such act, and the person did not have actual knowledge of the existence of any investigation into any such act.

(4) Subsections (2) and (3) do not apply to any claim, record, statement, or return made under chs. 70 to 79.

(5) (a) Except as provided in subs. (10) and (12), any person may bring a civil action as a qui tam plaintiff against a person who commits an act in violation of sub. (2) for the person and the state in the name of the state.

(b) The plaintiff shall serve upon the attorney general a copy of the complaint and documents disclosing substantially all material evidence and information that the person possesses. The plaintiff shall file a copy of the complaint with the court for inspection in camera. Except as provided in par. (c), the complaint shall remain under seal for a period of 60 days from the date of filing, and shall not be served upon the defendant until the court so orders. Within 60 days from the date of service upon the attorney general of the complaint, evidence, and information under this paragraph, the attorney general may intervene in the action.

(c) The attorney general may, for good cause shown, move the court for one or more extensions of the period during which a complaint in an action under this subsection remains under seal.

(d) Before the expiration of the period during which the complaint remains under seal, the attorney general shall do one of the following:

1. Proceed with the action or an alternate remedy under sub. (10), in which case the state shall prosecute the action or proceeding under sub. (10).

2. Notify the court that he or she declines to proceed with the action, in which case the action may not proceed.

(e) If a person brings a valid action under this subsection, no person other than the state may intervene or bring a related action while the original action is pending based upon the same facts underlying the pending action.

(f) In any action or other proceeding under sub. (10) brought under this subsection, all essential elements of the cause of action or complaint, including damages, must be proven by a preponderance of the evidence.

(6) If the state proceeds with an action under sub. (5) or an alternate remedy under sub. (10), the state has primary responsibility for prosecuting the action or proceeding under sub. (10). The state is not bound by any act of the person bringing the action, but that person has the right to continue as a party to the action, subject to the limitations under sub. (7).

(7) (a) The state may move to dismiss an action under sub. (5) or an administrative proceeding under sub. (10) to which the state is a party for good cause shown, notwithstanding objection of the person bringing the action, if that person is served with a copy of the state's motion and is provided with an opportunity to oppose the motion before the court or the administrative agency before which the proceeding is conducted.

(b) With the approval of the governor, the attorney general may compromise and settle an action under sub. (5) or an administrative proceeding under sub. (10) to which the state is a party, notwithstanding objection of the person bringing the action, if the court determines, after affording to the person bringing the action the right to a hearing at which the person is afforded the opportunity to present evidence in opposition to the proposed settlement, that the proposed settlement is fair, adequate, and reasonable considering the relevant circumstances pertaining to the violation.

(c) Upon a showing by the state that unrestricted participation in the prosecution of an action under sub. (5) or an alternate proceeding to which the state is a party by the person bringing the action would interfere with or unduly delay the

prosecution of the action or proceeding, or would result in consideration of repetitious or irrelevant evidence or evidence presented for purposes of harassment, the court may limit the person's participation in the prosecution in any of the following ways:

1. Limiting the number of witnesses that the person may call.

2. Limiting the length of the testimony of the witnesses.

3. Limiting the cross-examination of witnesses by the person.

4. Otherwise limiting the participation by the person in the prosecution of the action or proceeding.

(d) Upon showing by a defendant that unrestricted participation in the prosecution of an action under sub. (5) or alternate proceeding under sub. (10) to which the state is a party by the person bringing the action would result in harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the person's participation in the prosecution.

(9) Upon showing in camera by the attorney general that discovery by the person bringing the action would interfere with the state's ongoing investigation or prosecution of a criminal or civil matter arising out of the same facts as the facts upon which the action is based, the court may stay the discovery in whole or in part for not more than 60 days. The court may extend the stay upon further showing in camera by the attorney general that the state has pursued the criminal or civil investigation of the matter with reasonable diligence and the proposed discovery in the action brought under sub. (5) will interfere with the ongoing criminal or civil investigation or prosecution.

(10) The attorney general may pursue a claim relating to an alleged violation of sub. (2) through an alternate remedy available to the state or any state agency,

including an administrative proceeding to assess a civil forfeiture. If the attorney general elects an alternate remedy, the attorney general shall serve timely notice of his or her election upon the person bringing the action under sub. (5), and that person has the same rights in the alternate venue as the person would have had if the action had continued under sub. (5). Any finding of fact or conclusion of law made by a court or by a state agency in the alternate venue that has become final is conclusive upon all parties named in an action under sub. (5). For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal, if all time for filing an appeal or petition for review with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(11) (a) Except as provided in pars. (b) and (d), if the state proceeds with an action brought by a person under sub. (5) or the state pursues an alternate remedy relating to the same acts under sub. (10), the person who brings the action shall receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person contributed to the prosecution of the action or claim.

(b) Except as provided in par. (d), if an action or claim is one in which the court or other adjudicator finds to be based primarily upon disclosures of specific information not provided by the person who brings an action under sub. (5) relating to allegations or transactions specifically in a criminal, civil, or administrative hearing, or in a legislative or administrative report, hearing, audit, or investigation, or report made by the news media, the court or other adjudicator may award an amount that it considers appropriate but that is not more than 10 percent of the proceeds of the action or settlement of the claim, depending upon the significance of

the information and the role of the person bringing the action in advancing the prosecution of the action or claim.

(c) Except as provided in par. (d), in addition to any amount received under par. (a) or (b), a person bringing an action under sub. (5) shall be awarded his or her reasonable expenses necessarily incurred in bringing the action together with the person's costs and reasonable actual attorney fees. The court or other adjudicator shall assess any award under this paragraph against the defendant.

(d) Whether the state proceeds with the action or an alternate proceeding under sub. (10), if the court or other adjudicator finds that the person who brought an action under sub. (5) also planned or initiated the violation upon which the action or proceeding is based, then the court may, to the extent that the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under par. (a) or (b), taking into account the role of that person in advancing the prosecution of the action or claim and any other relevant circumstance pertaining to the violation, except that if the person bringing the action is convicted of criminal conduct arising from his or her role in a violation of sub. (2), the court or other adjudicator shall dismiss the person as a party and the person shall not receive any share of the proceeds of the action or claim or any expenses, costs, or fees under par. (c).

(12) (a) No court has jurisdiction over an action brought by a private person under sub. (5) against a state public official if the action is based upon information known to the attorney general at the time that the action is brought.

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(b) No person may bring an action under sub. (5) that is based upon allegations or transactions that are the subject of a civil action or an administrative proceeding

to assess a civil forfeiture in which the state is a party if that action or proceeding was commenced prior to the date that the action is filed.

(13) The state is not liable for any expenses incurred by a private person in bringing an action under sub. (5).

(14) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against by his or her employer because of lawful actions taken by the employee, on behalf of the employee, or by others in furtherance of an action or claim filed under this section, including investigation for, initiation of, testimony for, or assistance in an action or claim filed or to be filed under sub. (5) is entitled to all necessary relief to make the employee whole. The relief shall in each case include reinstatement with the same seniority status that the employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay at the legal rate, and compensation for any special damages sustained as a result of the discrimination, including costs and reasonable actual attorney fees. An employee may bring an action to obtain the relief to which the employee is entitled under this subsection.

(15) A civil action may be brought based upon acts occurring prior to the effective date of this subsection .... [LRB inserts date], if the action is brought within the period specified in s. 893.981.

(16) A judgment of guilty entered against a defendant in a criminal action in which the defendant is charged with fraud or making false statements estops the defendant from denying the essential elements of the offense in any action under sub. (5) that involves the same elements as in the criminal action.

(17) The remedies provided for under this section are in addition to any other remedies provided for under any other law or available under the common law.

(18) This section shall be liberally construed and applied to promote the public interest and to effect the congressional intent in enacting 31 USC 3729 to 3733, as reflected in the act and the legislative history of the act.

SECTION 21. 23.41 (5) of the statutes is amended to read:

23.41 **(5)** Each contract for construction work entered into by the department under this section shall be awarded on the basis of bids or competitive sealed proposals in accordance with procedures established by the department. Each contract for construction work shall be awarded to the lowest responsible bidder or the person submitting the most advantageous competitive sealed proposal as determined by the department. If the bid of the lowest responsible bidder or the proposal of the person submitting the most advantageous competitive sealed proposal is determined by the department to be in excess of the estimated reasonable value of the work or not in the public interest, the department may reject all bids or competitive sealed proposals. Every such contract is exempted from ss. 16.70 to 16.75, 16.755, 16.76, 16.767 to 16.77, 16.78 to 16.82, 16.855, 16.87, and 16.89, but ss. 16.528, 16.753, 16.754, ~~and~~ 16.765, 16.771, and 16.871 apply to the contract. Every such contract involving an expenditure of more than $60,000 is not valid until the contract is approved by the governor.

SECTION 22. 25.18 (1) (a) of the statutes is amended to read:

25.18 **(1)** (a) Notwithstanding s. 20.930 and all provisions of subch. IV of ch. 16, except ~~s. ss.~~ S. 16.753 and 16.771, employ special legal or investment counsel in any matters arising out of the scope of its investment authority. ~~Section~~ Sections 16.753 does not apply to the employment of legal or investment counsel for the purpose of assisting the board with investments. Ins SA 1-11 The employment of special legal counsel shall be with the advice and consent of the attorney general whenever such special counsel is to

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be compensated by the board. Any expense of counsel so employed shall be borne by the fund for which the services shall be furnished.

SECTION 23. 25.18 (1) (f) of the statutes is amended to read:

25.18 **(1)** (f) Maintain and repair any building or other structure or premises which it owns in fee or in which it owns the beneficial interest and, notwithstanding all provisions of subch. IV or V of ch. 16, except ~~s.~~ ss. 16.753, 16.771, and 16.871, it shall have exclusive authority to make such agreements and enter into such contracts as it deems necessary for such purpose. ~~Section~~ Sections 16.753 does not apply to agreements and contracts entered into by the board for the purpose of assisting the board with investments. All noncapital costs under this paragraph shall be charged to the current income accounts of the funds having an interest in the building, structure or premises.

SECTION 24. 25.18 (1) (m) of the statutes is amended to read:

25.18 **(1)** (m) Notwithstanding all provisions of subchs. IV and V of ch. 16, except ~~s.~~ ss. 16.753, 16.771, and 16.871, employ professionals, contractors or other agents necessary to evaluate or operate any property if a fund managed by the board has an interest in, or is considering purchasing or lending money based upon the value of, that property. ~~Section~~ Sections 16.753 does not apply to the employment of any person for the purpose of assisting the board with investments. Costs under this paragraph shall be paid by the fund and charged to the appropriate account under s. 40.04 (3).

SECTION 25. 66.0902 of the statutes is created to read:

66.0902 False claims. (1) DEFINITIONS. In this section:

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

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

(2) PRESENTATION OF FALSE CLAIMS. Whoever knowingly presents or causes to be presented a false claim for payment under any public contract with a local governmental unit shall forfeit not less than $5,000 nor more than $10,000, plus 3 times the amount of the damages that were sustained by the local governmental unit or would have been sustained by the local governmental unit, whichever is greater, as a result of the false claim.

SECTION 26. 84.01 (13) of the statutes is amended to read:

84.01 **(13)** ENGINEERING SERVICES. The department may engage such engineering, consulting, surveying, or other specialized services as it deems advisable. Any engagement of services under this subsection is exempt from ss. 16.70 to 16.75, 16.755 to 16.77, 16.78 to 16.82, ~~and~~ 16.85 to 16.87, 16.875 to 16.89, but ss. 16.528, 16.752, 16.753, ~~and~~ 16.754, 16.771, and 16.871 apply to such engagement. Any engagement involving an expenditure of $3,000 or more shall be by formal contract approved by the governor. The department shall conduct a uniform cost-benefit analysis, as defined in s. 16.70 (3g), of each proposed engagement under this subsection that involves an estimated expenditure of more than ~~$25,000~~ $50,000 in accordance with standards prescribed by rule of the department. The department shall review periodically, and before any renewal, the continued appropriateness of contracting pursuant to each engagement under this subsection that involves an estimated expenditure of more than ~~$25,000~~.

SECTION 27. 84.06 (2) (a) of the statutes is amended to read:

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84.06 **(2)** (a) All such highway improvements shall be executed by contract based on bids unless the department finds that another method as provided in sub. (3) or (4) would be more feasible and advantageous. Bids shall be advertised for in the manner determined by the department. Except as provided in s. 84.075, the contract shall be awarded to the lowest competent and responsible bidder as determined by the department. If the bid of the lowest competent bidder is determined by the department to be in excess of the estimated reasonable value of the work or not in the public interest, all bids may be rejected. The department shall, so far as reasonable, follow uniform methods of advertising for bids and may prescribe and require uniform forms of bids and contracts. Except as provided in par. (b), the secretary shall enter into the contract on behalf of the state. Every such contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.77, 16.78 to 16.82, 16.87 and 16.89, but ss. 16.528, 16.752, 16.753, ~~and~~ 16.754, 16.771, and 16.871 apply to the contract. Any such contract involving an expenditure of $1,000 or more shall not be valid until approved by the governor. The secretary may require the attorney general to examine any contract and any bond submitted in connection with the contract and report on its sufficiency of form and execution. The bond required by s. 779.14 (1m) is exempt from approval by the governor and shall be subject to approval by the secretary. This subsection also applies to contracts with private contractors based on bids for maintenance under s. 84.07.

SECTION 28. 84.06 (3) of the statutes is amended to read:

84.06 **(3)** CONTRACTS WITH COUNTY OR MUNICIPALITY; DIRECT LABOR; MATERIALS. If the department finds that it would be more feasible and advantageous to have the improvement performed by the county in which the proposed improvement is located and without bids, the department may, by arrangement with the county highway

committee of the county, enter into a contract satisfactory to the department to have the work done by the county forces and equipment. In such contract the department may authorize the county to purchase, deliver, and store materials and may fix the rental rates of small tools and equipment. The contract shall be between the county and the state and shall not be based on bids, and may be entered into on behalf of the county by the county highway committee and on behalf of the state by the secretary. Such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230, except ss. 16.753 ~~and~~, 16.754, 16.771, and 16.871. If the total estimated indebtedness to be incurred exceeds $5,000 the contract shall not be valid until approved by the governor. The provisions of this subsection relating to agreements between a county and the state shall also authorize and apply to such arrangements between a city, town, or a village and the state. In such cases, the governing body of the city, town, or village shall enter into the agreement on behalf of the municipality.

SECTION 29. 84.06 (4) of the statutes is amended to read:

84.06 **(4)** SPECIAL CONTRACTS WITH RAILROADS AND UTILITIES. If an improvement undertaken by the department will cross or affect the property or facilities of a railroad or public utility company, the department may, upon finding that it is feasible and advantageous to the state, arrange to perform portions of the improvement work affecting such facilities or property or perform work of altering, rearranging, or relocating such facilities by contract with the railroad or public utility. Such contract shall be between the railroad company or public utility and the state and need not be based on bids. The contract may be entered into on behalf of the state by the secretary. Every such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230, except ss. 16.528, 16.752, 16.753, ~~and~~ 16.754,

16.771, and 16.871. No such contract in which the total estimated debt to be incurred exceeds $5,000 shall be valid until approved by the governor. As used in this subsection, "public utility" means the same as in s. 196.01 (5), and includes a telecommunications carrier as defined in s. 196.01 (8m), and "railroad" means the same as in s. 195.02. "Property" as used in this subsection includes but is not limited to tracks, trestles, signals, grade crossings, rights-of-way, stations, pole lines, plants, substations, and other facilities. Nothing in this subsection shall be construed to relieve any railroad or public utility from any financial obligation, expense, duty, or responsibility otherwise provided by law relative to such property.

SECTION 30. 84.06 (13) of the statutes is created to read:

84.06 **(13)** TESTS OF CONCRETE THICKNESS. Notwithstanding any other provision of this section and s. 84.01 (13), the department shall conduct all tests of concrete thickness on highway improvements within its jurisdiction.

stet. use department employees to its highway projects

SECTION 31. 85.015 of the statutes is amended to read:

85.015 Transportation assistance contracts. All contracts entered into under this chapter to provide financial assistance in the areas of railroads, urban mass transit, specialized transportation, and harbors are subject to ss. 16.528, 16.752, ~~and~~ 16.753, 16.771, and 16.871 but are exempt from ss. 16.70 to 16.75, 16.755 to 16.77, 16.78 to 16.82, 16.85 to 16.87, and 16.875 to 16.89.

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SECTION 32. 102.81 (2) of the statutes is amended to read:

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102.81 **(2)** The department may retain an insurance carrier or insurance service organization to process, investigate and pay claims under this section and may obtain excess or stop-loss reinsurance with an insurance carrier authorized to do business in this state in an amount that the secretary determines is necessary for the sound operation of the uninsured employers fund. In cases involving disputed

claims, the department may retain an attorney to represent the interests of the uninsured employers fund and to make appearances on behalf of the uninsured employers fund in proceedings under ss. 102.16 to 102.29. Section 20.930 and all provisions of subch. IV of ch. 16, except ~~s.~~ ss. 16.753 and 16.771, do not apply to an attorney hired under this subsection. The charges for the services retained under this subsection shall be paid from the appropriation under s. 20.445 (1) (rp). The cost of any reinsurance obtained under this subsection shall be paid from the appropriation under s. 20.445 (1) (sm).

SECTION 33. 165.08 of the statutes is amended to read:

165.08 Power to compromise. Any civil action prosecuted by the department by direction of any officer, department, board or commission, shall be compromised or discontinued when so directed by such officer, department, board or commission. Except as provided in ~~s.~~ ss. 20.931 (7) (b) and 20.932 (7) (b), any civil action prosecuted by the department on the initiative of the attorney general, or at the request of any individual may be compromised or discontinued with the approval of the governor. In any criminal action prosecuted by the attorney general, the department shall have the same powers with reference to such action as are vested in district attorneys.

SECTION 34. 165.25 (11) of the statutes is amended to read:

165.25 **(11)** FALSE CLAIMS. Diligently investigate possible violations of s. 20.931 or 20.932, and, if the department determines that a person has committed an act that is punishable under s. 20.931 or 20.932, whichever is being investigated, may bring a civil action against that person.

SECTION 35. 221.0903 (4) (b) of the statutes is amended to read:

221.0903 **(4)** (b) *Contracts for examination services.* The division may enter into contracts with any bank supervisory agency with concurrent jurisdiction over a state bank or an in-state branch of an out-of-state state bank to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the division's examiners to the agency at a reasonable rate of compensation. Contracts entered into under this paragraph are exempt from ss. 16.70 to 16.752, 16.754 to 16.76, ~~and~~ 16.767 to 16.77, and 16.78 to 16.82.

SECTION 36. 801.02 (1) of the statutes is amended to read:

801.02 **(1)** Except as provided in ~~s.~~ ss. 20.931 (5) (b) and 20.932 (5) (b), a civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 90 days after filing.

SECTION 37. 803.09 (1) and (2) of the statutes are amended to read:

803.09 **(1)** Except as provided in ~~s.~~ ss. 20.931 and 20.932, upon timely motion anyone shall be permitted to intervene in an action when the movant claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest, unless the movant's interest is adequately represented by existing parties.

(2) Except as provided in ~~s.~~ ss. 20.931 and 20.932, upon timely motion anyone may be permitted to intervene in an action when a movant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order or rule administered by a federal or state governmental officer or agency or upon any

regulation, order, rule, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely motion may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

SECTION 38. 804.01 (2) (intro.) of the statutes is amended to read:

804.01 **(2)** SCOPE OF DISCOVERY. (intro.) Except as provided in ~~s.~~ ss. 20.931 (9) and 20.932 (9), and unless otherwise limited by order of the court in accordance with the provisions of this chapter, the scope of discovery is as follows:

SECTION 39. 805.04 (2m) of the statutes is amended to read:

805.04 **(2m)** FALSE CLAIMS. An action filed under s. 20.931 or 20.932 may be dismissed only by order of the court. In determining whether to dismiss the action filed under s. 20.931 or 20.932, the court shall take into account the best interests of the parties and the purposes of s. 20.931 or 20.932, whichever is appropriate.

SECTION 40. 893.981 of the statutes is amended to read:

893.981 False claims. An action or claim under s. 20.931 or 20.932 shall be commenced within 10 years after the cause of the action or claim accrues or be barred.

SECTION 41. Nonstatutory provisions.

(1) REPORT ON LOCAL ROAD PROJECTS. No later than the first day of the 7th month beginning after the effective date of this subsection, the department of transportation shall submit a report to the joint committee on finance that contains all of the following:

(a) Recommendations on actions that the department and local governments can take to improve the efficiency, cost-effectiveness, and timeliness of local road construction projects.

(b) Any proposed legislative changes that the legislature can consider that may help to implement the recommendations under paragraph (a).

SECTION 42. Initial applicability. Ins SA1-17

(1) The treatment of section 16.705 (5g), (5m), and (5r) of the statutes, the renumbering and amendment of section 16.705 (1), (2), (3), and (6) of the statutes, and the creation of section 16.705 (1) (a) 3. and (b), (2) (a) 3. and 4. (b), and (c), (3) (am) 4. and (bm), and (6) (a) of the statutes first apply to solicitations for contractual services issued on the effective date of this subsection.

(2) The creation of section 16.705 (1) (c) of the statutes first applies to contracts entered into, renewed, modified, or extended, whichever occurs first, on the effective date of this subsection.

(3) The treatment of section 16.705 (4) of the statutes first applies to a solicitation or a letter of intent to contract issued on the effective date of this subsection.

(4) The treatment of sections 16.771, 16.871, 23.41 (5), 25.18 (1) (a), (f), and (m), 66.0902, 84.01 (13), 84.06 (2) (a), (3), and (4), 85.015, 102.81 (2), and 221.0903 (4) (b) of the statutes first applies with respect to false claims that are presented or caused to be presented on the effective date of this subsection.

(END)

State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa1587/P1
ARG:kjf:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO 2009 SENATE BILL 447

At the locations indicated, amend the bill as follows:

1. Page 24, line 14: delete "16.77, 16.78 to".

2. Page 24, line 14: delete "~~and~~" and substitute "and".

3. Page 24, line 14: delete "16.87, 16.875 to".

4. Page 24, line 15: delete "~~and~~" and substitute "and".

5. Page 24, line 15: delete ", 16.771, and 16.871".

INS A

6. Page 24, line 16: before "Any" insert "Section 20.932 does not apply to any engagement of services under this subsection.".

7. Page 24, line 23: after that line insert:

INS B

SECTION 26r. 84.01 (31) of the statutes is amended to read:

84.01 **(31)** ACCOMMODATION OF UTILITY FACILITIES WITHIN HIGHWAY RIGHTS-OF-WAY. Notwithstanding ss. 84.06 (4), 84.063, 84.065, and 84.093, the department may, upon

finding that it is feasible and advantageous to the state, negotiate and enter into an agreement to accept any plant or equipment used for the conveyance, by wire, optics, radio signal, or other means, of voice, data, or other information at any frequency over any part of the electromagnetic spectrum, or to accept any services associated with the collection, storage, forwarding, switching, and delivery incidental to such communication, as payment for the accommodation of a utility facility, as defined in s. 84.063 (1) (b), within a highway right-of-way. Any agreement under this subsection is exempt from ss. 16.70 to 16.75, 16.755 to 16.82, and 16.85 to 16.89, but ss. 16.528, 16.752, and 16.754 apply to such agreement. Section 20.932 does not apply to any agreement under this subsection."

<end INS B>

8. Page 25, line 12: delete "16.77, 16.78 to".

9. Page 25, line 13: delete "~~and~~" and substitute "and".

10. Page 25, line 13: delete ", 16.771, and 16.871".

INS C

11. Page 25, line 14: before "Any" insert "Section 20.932 does not apply to the contract.".

INS D

12. Page 26, line 6: after "secretary." insert "Section 20.932 does not apply to the contract.".

13. Page 26, line 8: delete "~~and~~," and substitute "and".

14. Page 26, line 8: delete ", 16.771, and 16.871".

INS E

15. Page 26, line 24: after "secretary." insert "Section 20.932 does not apply to the contract.".

16. Page 26, line 25: delete "~~and~~ 16.754," and substitute "and 16.754".

17. Page 27, line 1: delete "16.771, and 16.871".

18. Page 27, line 18: delete "~~and~~" and substitute "and".

19. Page 27, line 18: delete ", 16.771, and 16.871".

20. Page 27, line 19: delete "16.77, 16.78 to".

21. Page 27, line 19: after "16.89." insert "Section 20.932 does not apply to contracts specified in this section.".

INS F

(END)

State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa1509/en
ARG:cjs:jf

SENATE AMENDMENT 2,

TO 2009 SENATE BILL 447

February 10, 2010 - Offered by Senator LASSA.

At the locations indicated, amend the bill as follows: Ins SA2-1

1. Page 27, line 20: before that line insert:

"**SECTION 31m.** 85.65 of the statutes is created to read:

85.65 Department workload retention goals and reports. (1) Beginning on January 1, 2011, the department shall make all reasonable efforts to ensure that it does not outsource to persons not employed by the department more than 50 percent of work for which the department has responsibility, excluding highway maintenance work contracted to counties and excluding highway construction work that, under federal law or regulation or any condition imposed by a federal agency for the receipt of federal highway aid, is required to be performed by contract.

(2) The department shall submit annual reports to the joint committee on finance explaining its actions taken to meet, and the status of its progress in meeting, the goal specified in sub. (1). These reports shall include updated recommendations

Ins SA2-1 cont'd

for what the department considers to be an appropriate ratio of work performed by department employees to work outsourced to nonemployees.

(3) In submitting information under s. 16.42 for purposes of the 2011-13 biennial budget bill and each biennial budget bill thereafter, the department shall submit a plan explaining how and when it will meet the goal specified in sub. (1), including identifying any additional authorized positions required to meet the goal."

(END)

State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa1342/en
CMH&ARG:wlj/cjs/nwn:rs

SENATE AMENDMENT 1,

TO 2009 SENATE BILL 447

February 10, 2010 - Offered by Senator LASSA.

At the locations indicated, amend the bill as follows:

1. Page 7, line 13: delete "and 4.".

Ins SA1-1

2. Page 7, line 14: delete the material beginning with "preparing" and ending with "accuracy" on line 16 and substitute "that contracts for services under this section perform periodic audits on cost-benefit analyses or continued appropriateness reviews and contracts that required a cost-benefit analysis or continued appropriateness review".

3. Page 7, line 17: delete lines 17 to 20.

4c. Page 7, line 21: delete the material beginning with that line and ending with page 8, line 2, and substitute:

"(b) 1. A cost-benefit analysis or continued appropriateness review is not required for the following services:

a. Services that federal or state law requires to be performed by contract.

Ins SA1-2

continues

Ins SA1-2 (cont'd)

b. Services that are incidental to the purchase of a commodity.

c. Services that are substantially dissimilar to services performed by state employees or that state employees have not performed historically and are not able to perform without significant retraining or investment in infrastructure or capital.

d. Services that must be provided per a contract, license, or warranty by the original equipment manufacturer or publisher unless the contract, license, or warranty has expired or is no longer valid.

2. If an agency is exempted from the cost-benefit analysis or continued appropriateness review under subd. 1. c. only, the department must include in the report submitted under sub. (8) the services that the agency determined were exempt under subd. 1. c.".

5. Page 8, line 7: delete the material beginning with that line and ending with page 9, line 2.

Ins SA1-3

6. Page 9, line 4: delete the material beginning with ", or any representative" and ending with "by a solicitation" on line 6 and substitute "or a labor organization that is certified under subch. V of ch. 111 to be the representative of the appropriate collective bargaining unit that is aggrieved by a solicitation".

Ins SA1-4

7. Page 9, line 8: after "with" insert ", or send an electronic notice of intent to protest to,".

8. Page 9, line 10: after "written" insert "or send an electronic".

Ins SA1-5

9. Page 9, line 23: after that line insert:

"(c) Signing bonuses, reimbursements, and per diem costs included in all contracts for contractual services.".

Ins SA 1-

10f. Page 10, line 1: delete the material beginning with "secretary" and ending with "approval" on line 3 and substitute "agency for which the contractual services are performed notifies the secretary and the joint committee on finance the amount by which the cost exceeds the original bid and the reason for the increase".

Ins SA 1-7

10L. Page 11, line 12: after that line insert:

"**SECTION 15g.** 16.705 (8) (am) of the statutes is created to read:

16.705 **(8)** (am) As provided under sub. (2) (b) 2., any services on which agencies would have had to perform a cost-benefit analysis or a continued appropriateness review but for the exemption under sub. (2) (b) 1. c.".

Ins SA 1-8

11. Page 12, line 20: after that line insert:

"**SECTION 17g.** 16.75 (1) (b) of the statutes is amended to read:

16.75 **(1)** (b) When the estimated cost exceeds $25,000, the department shall invite bids to be submitted. The department either shall ~~either~~ solicit sealed bids to be opened publicly at a specified date and time~~,~~ or shall solicit bidding by auction to be conducted electronically at a specified date and time. Whenever bids are invited, due notice inviting bids ~~shall~~ may be published as a class 2 notice~~,~~ under ch. 985 ~~or~~, and notice inviting bids, including a copy of all documents soliciting bids, shall be posted on the Internet at a site determined or approved by the department. The bid opening or auction shall occur ~~at least 7 days after the date of the last insertion of the notice or~~ at least 7 days after the date of posting on the Internet. The notice under ch. 985, if applicable, and the Internet site shall specify whether sealed bids are invited or bids will be accepted by auction, and shall give a clear description of the materials, supplies, equipment, or contractual services to be purchased, the amount of any bond, share draft, check, or other draft to be submitted as surety with the bid

SA Ins 1-8 cont'd

or prior to the auction, and the date and time that the public opening or the auction will be held.

SECTION 17p. 16.75 (2m) (b) of the statutes is amended to read:

16.75 **(2m)** (b) When the estimated cost exceeds $25,000, the department may invite competitive sealed proposals by publishing a class 2 notice under ch. 985 ~~or by posting~~ and shall post notice, including all documents soliciting proposals, on the Internet at a site determined or approved by the department. The notice under ch. 985, if applicable, and the notice on the Internet site shall describe the materials, supplies, equipment, or contractual services to be purchased, the intent to make the procurement by solicitation of proposals rather than by solicitation of bids, any requirement for surety, and the date the proposals will be opened, which shall be ~~at least 7 days after the date of the last insertion of the notice or~~ at least 7 days after the date of posting on the Internet.

SECTION 17s. 16.75 (6) (c) of the statutes is amended to read:

16.75 **(6)** (c) If the secretary determines that it is in the best interest of this state to do so, he or she may, with the approval of the governor, waive the requirements of subs. (1) to (5) and may purchase supplies, material, equipment, or contractual services, other than printing and stationery, from a private source other than a source specified in par. (b). Except as provided in sub. (2g) (c), if the cost of the purchase is expected to exceed $25,000, the department ~~shall~~ may first publish a class 2 notice under ch. 985 ~~or~~ and shall post a notice on the Internet at the site determined or approved by the department under sub. (1) (b) describing the materials, supplies, equipment, or contractual services to be purchased, stating the intent to make the purchase from a private source without soliciting bids or competitive sealed proposals and stating the date on which the contract or purchase

Ins SA 1-8 cont'd

order will be awarded. The date of the award shall be at least 7 days after ~~the date of the last insertion or~~ the date of posting on the Internet.".

12. Page 13, line 3: after that line insert:

Ins SA 1-9

"**SECTION 18r.** 16.87 (2) of the statutes is renumbered 16.87 (2) (a) and amended to read:

16.87 **(2)** (a) A contract for engineering services or architectural services ~~or a~~ to be done for or furnished to the state or a department, board, commission, or officer of the state is exempt from the requirements of ss. 16.75 and 16.705, but an architect employed at the department shall determine if the project could be completed more effectively and efficiently with state employees before a contract may be approved under sub. (3).

(b) A contract involving an expenditure of $10,000 or more for construction work, or $30,000 or more for limited trades work, to be done for or furnished to the state or a department, board, commission, or officer of the state is exempt from the requirements of ss. 16.705 and 16.75.

(c) The department shall attempt to ensure that 5% of the total amount expended under this section in each fiscal year is paid to minority businesses, as defined under s. 16.75 (3m) (a).".

13. Page 22, line 21: delete "~~s.~~ ss." and substitute "s.".

14. Page 22, line 21: delete "and 16.771".

Ins SA 1-10

15. Page 22, line 22: delete "Section" and substitute "~~Section~~ Sections".

16. Page 22, line 22: delete "does" and substitute "~~does~~, 16.771, 16.871 and 20.932 do".

Ins SA 1-11

17. Page 22, line 24: after "investments" insert "or arising out of the scope of the board's investment authority".

18. Page 23, line 6: delete "~~s.~~ ss." and substitute "s.".

19. Page 23, line 6: delete ", 16.771, and 16.871".

Ins SA 1-12

20. Page 23, line 8: delete "Section" and substitute "~~Section~~ Sections".

21. Page 23, line 8: delete "does" and substitute "~~does~~, 16.771, 16.871, and 20.932 do".

Ins SA 1-13

22. Page 23, line 10: after "investments" insert "or arising out of the scope of the board's investment authority".

23. Page 23, line 15: delete "~~s.~~ ss." and substitute "s.".

24. Page 23, line 15: delete ", 16.771, and 16.871".

25. Page 23, line 18: delete "Section" and substitute "~~Section~~ Sections".

Ins SA 1-14

26. Page 23, line 18: delete "does" and substitute "~~does~~, 16.771, 16.871, and 20.932 do".

27. Page 23, line 19: after "investments" insert "or arising out of the scope of the board's investment authority".

Ins SA 1-15

28. Page 24, line 14: delete "16.75," and substitute "~~16.75~~ 16.7015, 16.71 to 16.751,".

29. Page 24, line 15: after "ss." insert "16.42, 16.46,".

30. Page 24, line 15: after "16.528," insert "16.705,".

31. Page 24, line 23: after that line insert:

Ins SA 1-16

"**SECTION 26m.** 84.01 (13m) of the statutes is created to read:

Ins SA 1-16 cont'd

84.01 **(13m)** CONTRACTUAL ENGAGEMENTS OF SERVICES REPORTING. On or before October 15 of each year, the department shall 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 engagements of services authorized under sub. (13) during the preceding fiscal year. The report shall also include, with respect to contractual engagements of services for the preceding fiscal year, all of the following:

(a) A summary of the cost-benefit analyses completed in compliance with rules promulgated by the department.

(b) Recommendations for elimination of unneeded contractual engagements of services and for consolidation or resolicitation of existing contractual engagements of services.".

32. Page 27, line 12: delete "(13)".

33. Page 27, line 12: after "shall" insert "use department employees to".

34. Page 27, line 13: delete "highway improvements within its jurisdiction" and substitute "its highway projects".

35. Page 31, line 7: delete "section" and substitute "sections".

Ins SA1-17

37. Page 31, line 7: after "(5r)" insert "and 16.75 (1) (b), (2m) (b), and (6) (c)".

38. Page 31, line 8: delete "(3),".

39. Page 31, line 9: delete "and 4.".

40. Page 31, line 9: delete the material beginning with "(3)" and ending with "(bm)," on line 10.

(END)