



State of Wisconsin
2017 - 2018 LEGISLATURE

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2017 SENATE BILL 85

March 2, 2017 - Introduced by JOINT LEGISLATIVE AUDIT COMMITTEE. Referred to Committee on Transportation and Veterans Affairs.

1 **AN ACT** *to renumber* 84.06 (1) (a); *to amend* 13.489 (3), 84.01 (13), 84.06 (2) (a),
2 779.14 (1) (b), 779.14 (2) (a) 3., 895.56 (2) (a) and 895.56 (2) (c); and *to create*
3 13.489 (3) (b) 2., 13.489 (5) (a) 3., 13.489 (5) (am), 84.013 (1m), 84.06 (1) (ag),
4 84.06 (1) (aj) and 84.06 (2m) of the statutes; **relating to:** use of the construction
5 manager-general contractor process for highway project contracting, major
6 highway project reports, and cost-benefit analyses of certain services related
7 to transportation.

Analysis by the Legislative Reference Bureau

This bill implements the legislative changes recommended by the Legislative Audit Bureau in LAB's January 2017 report regarding the state highway program.

Under current law, DOT administers a major highway projects program. With limited exceptions, a major highway project is either 1) a project having a total cost of more than \$30,000,000 and involving a) construction of a new highway 2.5 miles or more in length; b) reconstruction or reconditioning of an existing highway that relocates at least 2.5 miles of the highway or adds one or more lanes five miles or more in length to the highway; or c) improvement of an existing multilane, divided highway to freeway standards or 2) a project having a total cost of at least \$75,000,000. For both categories of major highway projects, DOT annually adjusts the total cost threshold based on an inflation index.

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For major highway projects of the first type, the project must generally receive the approval of the Transportation Projects Commission and the legislature (generally referred to as “enumeration”) before the project may be constructed. For major highway projects of the second type, DOT must submit a report to TPC and request TPC approval to proceed with the project under a passive review process. Once approved by TPC, the project is considered enumerated as a major highway project under the statutes.

Among the requirements of the program, DOT must provide TPC with any studies and cost estimates with respect to a proposed project that are requested by TPC.

This bill specifies that when DOT provides a full project cost estimate under this requirement, the estimate must include all costs associated with the project, including all costs before enumeration, design engineering and construction engineering costs, the costs of environmental studies, and costs of the project that are paid by another program of the department. A full project cost estimate must also include the expected date of completion and an estimate of the effects of construction cost inflation and unexpected costs on the cost of the project.

Also under current law, every six months, DOT must submit a report to the TPC that summarizes the current status of each major highway project and identifies all actual and estimated project costs, itemized by major cost categories, as of the date of preparation of the report. The project information included in these reports must be reported on both a cumulative basis from the inception of the project and on an updated basis for the period since the department’s last report.

Under this bill, these reports must also include for each project the full project cost estimate of the project made for the commission as of the date of the commission’s approval of the project. This bill also specifies that the report must treat separately and as described in the enumerating statute each project.

This bill also requires DOT to annually prepare and submit to certain legislative committees a report that provides all of the following information for each major highway project:

1. The full project cost estimate of the project as of the date of enumeration.
2. The year in which the department expects to complete the project as of the date of enumeration.
3. The costs incurred as of the date of preparation of the report.
4. The full project cost estimate as of the date of preparation of the report.
5. The year in which the department expects to complete the project as of the date of preparation of the report.
6. An explanation of any difference between the full project cost estimates under items 1. and 4.
7. The opinion of the department as to whether the project will be completed as originally scheduled without the allocation of additional funds.

The bill also specifies that this report must treat separately and as described in the enumerating statute each project.

Under current law, highway improvement projects undertaken by DOT must be executed by contract based on bids, with limited exceptions. This bill authorizes

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DOT, for no more than three highway improvement projects, to enter into contracts using a construction manager-general contractor process. Under this process, the department contracts with a provider of construction services to supervise the design work for the project and, subject to an acceptable proposal, contracts with the provider of construction services for construction of the project. This bill authorizes DOT to enter into no more than three design contracts utilizing the construction manager-general contractor process no later than July 1, 2021.

Under current law, DOT may engage engineering, consulting, surveying, or other specialized services and this engagement of services is exempt from certain provisions of law relating to state procurement. For an engagement of services of more than \$300,000, DOT must conduct a uniform cost-benefit analysis before the engagement and must review periodically, and before any renewal, the continued appropriateness of the engagement. Under this bill, when DOT conducts a cost-benefit analysis under this provision, DOT must also consider and document the results of the analysis before determining whether to undertake the proposed engagement.

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

1 **SECTION 1.** 13.489 (3) of the statutes is amended to read:

2 13.489 (3) ASSISTANCE TO COMMISSION. (a) The department of transportation
3 shall assist the commission in the performance of its duties.

4 (b) 1. The department of transportation shall, when requested by the
5 commission, make or cause to be made ~~such~~ any studies and cost estimates with
6 respect to any proposed project as that are necessary to permit the commission to
7 consider the project.

8 3. The costs of ~~such~~ studies under this paragraph shall be charged to the
9 appropriate program appropriation under s. 20.395.

10 **SECTION 2.** 13.489 (3) (b) 2. of the statutes is created to read:

11 13.489 (3) (b) 2. When the department provides a full project cost estimate
12 under this paragraph, the estimate shall include all costs associated with the project,
13 including all costs before enumeration, design engineering and construction

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1 engineering costs, the costs of environmental studies, and costs of the project that are
2 paid by another program of the department. A full project cost estimate under this
3 paragraph shall include the expected date of completion and an estimate of the
4 effects of construction cost inflation and unexpected costs on the cost of the project.

5 **SECTION 3.** 13.489 (5) (a) 3. of the statutes is created to read:

6 13.489 (5) (a) 3. For each project specified under subd. 1., identifies the full
7 project cost estimate of the project made for the commission as of the date of the
8 commission's approval of the project.

9 **SECTION 4.** 13.489 (5) (am) of the statutes is created to read:

10 13.489 (5) (am) The report under par. (a) shall treat separately and as described
11 in the enumerating statute each project enumerated under s. 84.013 (3) or 84.0145
12 (3) (b) and shall treat separately each project approved under s. 84.013 (6).

13 **SECTION 5.** 84.01 (13) of the statutes is amended to read:

14 84.01 (13) ENGINEERING SERVICES. The department may engage such
15 engineering, consulting, surveying, or other specialized services as it deems
16 advisable. Any engagement of services under this subsection is exempt from ss.
17 16.70 to 16.75, 16.755 to 16.82, and 16.85 to 16.89, but ss. 16.528, 16.752, 16.753, and
18 16.754 apply to such engagement. Any engagement involving an expenditure of
19 \$3,000 or more shall be by formal contract approved by the governor. The
20 department shall conduct a uniform cost-benefit analysis, as defined in s. 16.70 (3g),
21 of each proposed engagement under this subsection that involves an estimated
22 expenditure of more than \$300,000 in accordance with standards prescribed by rule
23 of the department and consider and document the results of the analysis before the
24 determination of whether to undertake the proposed engagement. The department
25 shall review periodically, and before any renewal, the continued appropriateness of

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1 contracting pursuant to each engagement under this subsection that involves an
2 estimated expenditure of more than \$300,000.

3 **SECTION 6.** 84.013 (1m) of the statutes is created to read:

4 84.013 **(1m)** (a) Annually no later than February 1, the department shall
5 prepare and submit under s. 13.172 (3) to the joint committee on finance, the joint
6 legislative audit committee, and the standing committees of the legislature with
7 jurisdiction over transportation matters a report that provides all of the following
8 information for each project enumerated under s. 84.013 (3) or 84.0145 (3) (b) or
9 approved under s. 84.013 (6):

10 1. The full project cost estimate, as established under s. 13.489 (3) (b) 2., of the
11 project as of the date of enumeration.

12 2. The year in which the department expects to complete the project as of the
13 date of enumeration.

14 3. The costs incurred as of the date of preparation of the report.

15 4. The full project cost estimate, as established under s. 13.489 (3) (b) 2., of the
16 project as of the date of preparation of the report.

17 5. The year in which the department expects to complete the project as of the
18 date of preparation of the report.

19 6. An explanation of any difference between the full project cost estimates
20 under subs. 1. and 4. that has not been addressed in a previous report under this
21 paragraph.

22 7. The opinion of the department as to whether the project will be completed
23 as originally scheduled without the allocation of additional funds.

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1 (b) The report under par. (a) shall treat separately and as described in the
2 enumerating statute each project enumerated under s. 84.013 (3) or 84.0145 (3) (b)
3 and shall treat separately each project approved under s. 84.013 (6).

4 **SECTION 7.** 84.06 (1) (a) of the statutes is renumbered 84.06 (1) (am).

5 **SECTION 8.** 84.06 (1) (ag) of the statutes is created to read:

6 84.06 (1) (ag) "Construction manager" means a person in the business of
7 providing construction services that is also qualified to supervise, manage, or
8 otherwise participate in the engineering, design, or construction work for an
9 improvement project.

10 **SECTION 9.** 84.06 (1) (aj) of the statutes is created to read:

11 84.06 (1) (aj) "Construction manager-general contractor contract" means a
12 contract for an improvement project awarded under sub. (2m).

13 **SECTION 10.** 84.06 (2) (a) of the statutes is amended to read:

14 84.06 (2) (a) All such highway improvements shall be executed by contract
15 based on bids unless the department finds that another method as provided in sub.
16 (2m), (3), or (4) would be more feasible and advantageous. Bids shall be advertised
17 for in the manner determined by the department. Except as provided in s. 84.075,
18 the contract shall be awarded to the lowest competent and responsible bidder as
19 determined by the department. If the bid of the lowest competent bidder is
20 determined by the department to be in excess of the estimated reasonable value of
21 the work or not in the public interest, all bids may be rejected. The department shall,
22 so far as reasonable, follow uniform methods of advertising for bids and may
23 prescribe and require uniform forms of bids and contracts. Except as provided in par.
24 (b), the secretary shall enter into the contract on behalf of the state. Every such
25 contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.82, 16.87 and 16.89, but

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1 ss. 16.528, 16.752, 16.753, and 16.754 apply to the contract. Any such contract
2 involving an expenditure of \$1,000 or more shall not be valid until approved by the
3 governor. The secretary may require the attorney general to examine any contract
4 and any bond submitted in connection with the contract and report on its sufficiency
5 of form and execution. The bond required by s. 779.14 (1m) is exempt from approval
6 by the governor and shall be subject to approval by the secretary. This subsection
7 also applies to contracts with private contractors based on bids for maintenance
8 under s. 84.07.

9 **SECTION 11.** 84.06 (2m) of the statutes is created to read:

10 **84.06 (2m) CONSTRUCTION MANAGER-GENERAL CONTRACTOR PROCESS.** (a) If the
11 department finds that it would be more feasible and advantageous, the department
12 may, prior to July 1, 2021, award a 2-phase construction manager-general
13 contractor contract to a construction manager for preconstruction and construction
14 services for an improvement project.

15 (b) For the design and engineering phase, the department may award a
16 construction manager-general contractor contract to a construction manager based
17 on qualifications, experience, best value, or any other combination of factors the
18 department considers appropriate.

19 (c) Before the project design is 90 percent complete, the construction manager
20 shall provide to the department a proposal for the construction manager to construct
21 the project. The proposal shall certify that at least 30 percent of the work for the
22 construction phase shall be performed by the construction manager.

23 (d) The department shall obtain an independent cost estimate for the
24 construction of the project.

25 (e) For the construction phase, the department may do any of the following:

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1 1. Enter into a construction contract with the construction manager pursuant
2 to a proposal under par. (c).

3 2. Award the construction contract in accordance with sub. (2).

4 (f) The department may utilize a construction manager-general contractor
5 contract for no more than 3 highway improvement projects.

6 **SECTION 12.** 779.14 (1) (b) of the statutes is amended to read:

7 779.14 (1) (b) With respect to contracts entered into under s. 84.06 (2) or (2m)
8 for highway improvements, any person who has a direct contractual relationship,
9 expressed or implied, with the prime contractor to perform, furnish, or procure labor,
10 services, materials, plans, or specifications.

11 **SECTION 13.** 779.14 (2) (a) 3. of the statutes is amended to read:

12 779.14 (2) (a) 3. With respect to contracts entered into under s. 84.06 (2) or (2m)
13 for highway improvements, failure of the prime contractor to comply with a contract,
14 whether express or implied, with a subcontractor, supplier, or service provider of the
15 prime contractor for performing, furnishing, or procuring labor, services, materials,
16 plans, or specifications for the purpose of making the highway improvement that is
17 the subject of the contract with the governmental entity.

18 **SECTION 14.** 895.56 (2) (a) of the statutes is amended to read:

19 895.56 (2) (a) The acts or omissions by the person occurred while performing
20 a contract entered into under s. 84.06 (2) or (2m), including acts or omissions by any
21 person who has a direct contractual relationship with the prime contractor, as
22 defined in s. 779.01 (2) (d), under a contract entered into under s. 84.06 (2) or (2m)
23 to perform labor or furnish materials.

24 **SECTION 15.** 895.56 (2) (c) of the statutes is amended to read:

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1 895.56 (2) (c) The acts or omissions involving petroleum-contaminated soil on
2 the property were required by reasonably precise specifications in the contract
3 entered into under s. 84.06 (2) or (2m), and the acts or omissions conformed to those
4 specifications, or were otherwise directed by the department of transportation or by
5 the department of natural resources.

6 **SECTION 16. Initial applicability.**

7 (1) The treatment of sections 84.06 (1) (a), (ag), and (aj), (2) (a), and (2m), 779.14
8 (1) (b) and (2) (a) 3., and 895.56 (2) (a) and (c) of the statutes first applies to contracts
9 entered into on the effective date of this subsection.

10 **(END)**