

1999 DRAFTING REQUEST

Bill

Received: **12/28/98**

Received By: **kuesejt**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget 6-0777**

By/Representing: **Caucutt**

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

Drafter: **kuesejt**

May Contact:

Alt. Drafters:

Subject: **State Government - miscellaneous**

Extra Copies:

Topic:

DOA:.....Caucutt - Master leases for sales of equipment to local governments and energy conservation construction projects

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kuesejt 01/22/99 kahlepj 01/22/99	gilfokm 01/23/99		_____			State
/1			ismith 01/25/99	_____	lrb_docadmin 01/25/99		State
/2	kuesejt 01/28/99	gilfokm 01/28/99	ismith 01/29/99	_____	gretskl 01/29/99		State
/3	kuesejt 01/29/99 hubliks 01/31/99	gilfokm 01/29/99 jgeller 01/31/99	hhagen 01/29/99	_____	gretskl 01/30/99		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typist</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/4			hhagen 01/31/99	_____ _____	gretskl 01/31/99		

FE Sent For:

<END>

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FE Sent For:

14 1/31 jcg 4/1/31 4/25/31

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FE Sent For: *1/3-1-29*
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1/29 *1/29*
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For: **Administration-Budget 6-0777**

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

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Subject: **State Government - miscellaneous**

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1999 DRAFTING REQUEST

Bill

Received: 12/28/98

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Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget 6-0777**

By/Representing: **Caucutt**

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

Drafter: **kuesejt**

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1?	kuesejt	1-1-2399 KMG	IS 1/25/99	25/HH 1/25/99			

FE Sent For:

<END>

(B)

**Statutory Language Proposals
1999-2001 Biennial Budget Request**

Attachment C

Division: Executive Budget & Finance

Relation to TAP or Business Goal No:

Goal #1-A; Provide borrowing with lowest available interest rate.

Author: David Erdman/Frank Hoadley

1. Concise Problem Statement or Issue:

1997 Act 27 created Section 16.858, Wis. Stats. which authorizes the contracting of energy conservation audits and construction projects. Using the Master Lease Program for the financing of these energy conservation projects will result in lower financing costs, which further results in additional energy conservation projects. However, section 16.858(2) implicitly combines the performance contracting of the energy project with a financing element and this combination creates a risk element that strongly restricts the use of the Master Lease Program. This risk element is that the performance contract is potentially liable for a portion of the lease payments. The State cannot expose the Master Lease Program with its cross-collateralization to this risk element.

2. Why change(s) needed and relationship to business goal(s):

Existing prohibits the use of the lowest cost-financing alternative (State Master Lease Program). The proposed change will allow for the use of the Master Lease Program.

3. Proposed language (attach copy of current law with markup if possible)

Modifications are needed to Section 16.858(2) that addresses use of the State's Master Lease Program as a possible finance vehicle, and if the Master Lease Program is used, the performance contract is structured that any energy short-falls (which also take into account the Master Lease payments) result in a payment being made by energy performance contract provider directly to the State.

4. Previous introduction or legislative history? (if none, leave blank) .

5. Fiscal estimate (will it cost money to implement this stat. language?)

Proposed change will lead to expansion of the Master Lease Program. Proposed change will allow for use of the Master Lease Program in the financing of WEI-3 projects, which will result in **lower** financing costs.

7. Proposed language:

- remedial (fixes a problem which must be resolved)
- new language needed to implement the decision item
- deletes language no longer needed or obsolete

JL

**Department of Administration (agency) Drafting Request
to the Legislative Reference Bureau**

➔ Draft for Possible 99-01 Budget Bill Introduction (*Agency DI No:* NA)

Draft for Possible Introduction as Department-sponsored or Independent Bill

Subject: Technical modifications to State Master Lease Program

Request Date: September 14, 1998

Reviewed by:

Contact Name in DOA for Drafter (phone no): David Erdman - Program Director (7-0374)
Dick Wagner - Agency budget staff (6-0653)

Brief Description of Intent:

1. Clarify what the master lease program can be used to finance. Clarify the term "goods" to include energy projects. **(Attachment A)**
2. Provide the opportunity to use the master lease program in the financing of energy conservation projects and audits. Specifically provide that, if the master lease program is used to finance these projects, the required lease payments are not conditioned upon any performance contract payment. **(Attachment B)**

Related Stat. Citations

1. s.16.76(4)(a)
2. s. 16.858(2)

➔ Additional material(s) are attached

JM

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to the Legislative Reference Bureau**

➡ Draft for Possible 99-01 Budget Bill Introduction (*Agency DI No:* NA)

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Related Stat. Citations

1. s.16.76(4)(a)
2. s. 16.858(2)

➡ Additional material(s) are attached

Jeff K

Miller, Steve

From: Caucutt, Dan [dan.caucutt@doa.state.wi.us]
Sent: Monday, December 28, 1998 11:31 AM
To: Miller, Steve
Cc: Erdman, David
Subject: Budget Language Request - DOA MASTER LEASE for Local Gov & Energy Projects

> Please add statutory authority to Section 16.76(4) that will permit the
> Department of Administration to utilize the Master Lease Program to
> acquire equipment that it will sell to local units government under an
> installment sales contract. This change will essentially allow local
> units of government to use the Master Lease Program.
>
> This language should also include:
>
> 1. as security for the installment sales contract, the local unit of
> government must issue a "promissory note"
>
> 2. such, the local units of government that will receive equipment
> acquired under the Master Lease must have authority under Wisconsin
> Statutes to issue such promissory note. A cross-reference to Section 66
> may be needed to embellish this.
>
> Capital Finance would like to review this proposed statutory change when
> it is available. At such time, Capital Finance will also share the
> proposed changes with Foley & Lardner, Bond Counsel for the Master Lease
> Program. These same review comments also apply to the changes being made
> for the energy improvement projects.
>
In addition, modify the purposes for which a master lease can be used to
specifically include energy performance improvements.

a. Specific change that lease of "goods" will include building
materials and mechanical equipment related to energy performance contracts.
b. Mortgage liens & property law issues
c. s.16.858 needs to be changed to allow separation of the concepts
of financing and performance guarantee.

Please advise if you need any information from us (Frank Hoadley or Dave
Erdman) for these changes proposed for the energy improvement projects.
Note: it is possible these energy language items came over to LRB from DOA
prior to the September 15 cutover for budget drafts.

Kuesel, Jeffery

From: Miller, Steve
Sent: Thursday, January 07, 1999 3:52 PM
To: 'Caucutt, Dan'
Cc: Kuesel, Jeffery
Subject: RE: Status Inquiry -- DOA (agency) Stat. Language Drafts

Dan,

We have stopped working on the two items you identified as dead.

Jeff Kuesel (266-6778) has items #1, #2, and #5 in process. #4 is complete. We cannot identify your third item. Do you have any more information on it?

Steve

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

From: Caucutt, Dan [mailto:dan.caucutt@doa.state.wi.us]
Sent: Thursday, January 07, 1999 1:48 PM
To: Miller, Steve
Subject: FW: Status Inquiry -- DOA (agency) Stat. Language Drafts
Importance: High

Steve: Here's a summary of budget drafts requested but not yet received for DOA as an agency. Also, so info on dead items. You may wish to forward this on to the assigned drafter(s).

> -----Original Message-----

> **From:** McMahon, Paul
> **Sent:** Thursday, January 07, 1999 1:11 PM
> **To:** Caucutt, Dan
> **Cc:** Brunner, Tara; Gill, Ryan; Massey, Mary; Wagner, Dick
> **Subject:** Status Inquiry -- DOA (agency) Stat. Language Drafts
> **Importance:** High

>
> As kind of a post-holiday, where-do-things-stand-? summary, please see the
> following information. This is a recapitulation of my 12-23 memo and
> attachment to you, which you forwarded to the LRB. If you would please
> relay this to the LRB, I'd be interested in getting a status report on the
> open items. Thanks and please call if necessary. I appreciate your
> assistance.

>
>
> * The following are drafts requested on behalf of Secretary Bugher
> where DOA is anticipating an original draft. We appreciate the fact that
> LRB staff are working hard on all drafting, but would like to determine
> the status:

>
> --Capital Finance/Master Lease: Clarify what the master lease program can
> be used to finance. Clarify the term "goods" to include energy projects.
> Submitted for drafting 9-15-98. Awaiting initial draft.

>
> --Capital Finance/Master Lease: Provide the opportunity to use the master
> lease program in the financing of energy conservation projects and audits.
> Specifically provide that, if the master lease program is used to finance
> these projects, the required lease payments are not conditioned upon any

- > performance contract payment. Submitted for drafting 9-15-98. Awaiting initial draft.
- >
- > --Permit the state to access and take advantage of federal contracts.
- > Waiting for initial draft.
- >
- > --Consolidate several DOA appropriations under an existing Chapter 20 appropriation.
- > Submitted for drafting 9-15-98. Awaiting initial draft.
- >
- > --Create language which permits the Secretary of Administration to move positions across certain appropriations, within the same fund source, during FY99-01, based on shifting needs of the department programs. Submitted for drafting 9-15-98. Awaiting initial draft.
- >
- >
- >
- > * The following items should be dropped from further consideration (deleted from the LRB work list):
- >
- > --Amend or delete certain provisions affecting purchases from minority vendors (proposal of the minority business manager.) Modifies 16.75(3m)3 and repeals 16.75(3m)4. Do not draft - should be dropped
- >
- > --School Energy Use Reporting. LRB 0815/P1 was initial draft.
- > Should be dropped.

Miller, Steve

From: Caucutt, Dan [dan.caucutt@doa.state.wi.us]
Sent: Saturday, January 16, 1999 11:40 AM
To: Miller, Steve
Subject: FW: Masterleases for sales of equipment to local Government LRB 1 495

LRB 1 495

> -----Original Message-----
> From: Caucutt, Dan
> Sent: Saturday, January 16, 1999 10:55 AM
> To: 'jeffery.kuesel@legis.state.wi.us'
> Subject: Masterleases for sales of equipment to local Government LRB
> 1495

>
> Point of clarification: The Governor wishes this extended authority to
> apply only to local security (cops, firefighting), and it should not
> include real property (which I've heard rumours of).

FOLEY & LARDNER

ATTORNEYS AT LAW

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WRITER'S DIRECT LINE
(414) 297-5764

CLIENT/MATTER NUMBER
015438/0101

EMAIL ADDRESS
reed.groethe@foleylaw.com

January 19, 1999

VIA FACSIMILE

Mr. K. Scott Hubli
Legislative Attorney
Legislative Reference Bureau
100 North Hamilton Street
Madison, Wisconsin

Dear Scott:

I am sending you, both by fax and e-mail, suggested statutory changes to enable the master lease authorization to be used for the energy savings program and the local government police car proposal. I have added some notes to explain my thinking. As you know, your comments and questions are always welcome.

Very truly yours,



Reed Groethe

Enclosure

cc: Mr. Frank R. Hoadley

AN ACT . . . ; relating to the budget

Analysis by the Legislative Reference Bureau

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

SECTION 1. 16.76 (4) (a) of the statute is amended to read:

16.76 (4) (a) In this subsection, "master lease" means an agreement entered into by the department on behalf of one or more agencies for the lease of goods obtaining property or the provision of services under which the department makes or agrees to make periodic payments. The department may act on behalf of one or more agencies or units of local government. The department may pay or agree to pay to the lesser under the master lease a sum substantially equivalent to or in excess of the aggregate value of goods involved property and services obtained, and it may be agreed that the department (or one or more agencies or units of local government) will become, or for no other or nominal consideration has the option to become, the owner of goods leased or to be leased property obtained or to be obtained under the master lease upon full compliance with its terms of the agreement,

SECTION 2. 16.76 (4) (c) of the statute is amended to read:

16.76 (4) (c) Payments under a master lease may include interest payable at a fixed or variable rate as the master lease may provide. The department may enter into agreements and ancillary agreements to facilitate the use of a master lease, including liquidity facilities, remarketing or dealer agreements, letter of credit agreements, insurance policies, interest rate guaranty agreements, reimbursement agreements, and indexing agreements and escrow agreements.

SECTION 3. 16.76 (4) (e) of the statute is amended to read:

16.76 (4) (e) The department may grant ~~the lessee~~ a perfected security interest in ~~goods leased property obtained~~ or ~~to be leased~~ obtained under each a master lease. The department shall record and preserve evidence of the security interest in its offices at all times during which the master lease is in effect.

SECTION 4. 16.76 (4) (f) of the statute is amended to read:

16.76 (4) (f) The department may appoint one or more fiscal agents for each master lease. Each fiscal agent shall be an incorporated bank or trust company authorized by the laws of the United States or of the state in which it is located to do business as a banking or trust company. ~~Sections 16.705 and 16.75 do not apply to contracts for fiscal agent services.~~ The department shall periodically require competitive proposals, under procedures established by the department, for fiscal agent services under this paragraph. There may be deposited with a fiscal agent, in a special account for such purpose only, a sum estimated to be sufficient to enable the fiscal agent to make all payments which will come due under the master lease not more than 15 days after the date of deposit. The department may make such other provisions respecting fiscal agents as it considers necessary or useful and may enter into a contract with any fiscal agent containing such terms, including compensation, and conditions in regard to the fiscal agent as it considers necessary or useful.

SECTION 5. 16.76 (4) (g) of the statutes is created to read:

16.76 (4) (g) Sections 16.705 and 16.75 do not apply to agreements or ancillary agreements under paragraph (e) or contracts for fiscal agency services under paragraph (f).

SECTION 6. 16.76 (4) (h) of the statutes is created to read:

16.76 (4) (h) A master lease may not be used to obtain a facility for use or occupancy by the state or an agency, department or instrumentality of the state or to obtain an internal improvement.

SECTION 7. 16.76 (4) (i) of the statutes is created to read:

16.76 (4) (i) A master lease may not provide that the right of the department or any agency of the State to obtain property or services under the master lease depends on payments to be made by a unit of local government for property or services obtained by the unit of local government under the master lease unless the obligation of the unit of local government to make those payments constitutes a general obligation.

SECTION 8. 20.505 (10) of the statutes is created to read:

20.505 (10) MASTER LEASE. As a continuing appropriation, to be applied to payments under the related master lease, all payments made or to be made by units of local government with respect to property or services obtained under a master lease under s. 16.76 (4)

Comments

1. The draft uses the language of "obtaining" instead of the language of "leasing" for two reasons. First, although the language of "leasing" is widely used in the public finance industry, the type of contract is more correctly described as an installment purchase. These contracts were historically structured as leases because they relied upon lease authorizations. Here, the legislation creates the authorization, so there is no need to bend the contract to fit the authorization; the authorization can be made to fit the contract. Second, the language of "leasing" makes no sense when applied to services.
2. The legislation expands the master lease program so that property or services may be obtained for units of local government.
3. The term "goods" connotes moveable property; using the term "property" allows fixtures and real property improvements also to be acquired.
4. Using the term "property" rather than the term "goods" obviously opens up the possibility that real property will be acquired by a master lease. In light of Wis. Const. art. VIII, § 7 (2) (d), it is prudent to provide that a master lease may not be used to obtain a facility for use or occupancy by the state or an agency, department or instrumentality of the state.
5. The list of specifically described ancillary agreements has been increased by one item. The Capital Finance Office may have some additional suggestions.
6. An appropriation has been added relating to payments from units of local government.
7. Non-GO payments from units of local government are separated from State appropriations for fiscal reasons. A separate question, which this draft does not address, is whether the inclusion of property or services for a unit of local government, even if the unit of local government has a general obligation, offends Wis. Const. art VIII, § 3, because it is tantamount to the State guaranteeing the payments of the unit of local government.

Kuesel, Jeffery

From: Hubli, Scott
Sent: Tuesday, January 19, 1999 4:55 PM
To: Kuesel, Jeffery; Marchant, Robert
Subject: Chapter 409 and the State's Master Lease Program

Jeff --

I have looked (briefly because of time constraints) at whether the draft expanding the master lease program raises issues under ch. 409. Security interests under the state's master lease program are already exempt from the financing statement filing requirements under s. 409.302(1)(i), which exempts a security interest created by a master lease entered into by the state under s. 16.76 (4). My general thought is that no amendment is necessary. I (or Rob) will write a brief drafter's note for your draft raising a small question about whether DOA may wish to make a modification to the provision regarding fixture filings (s. 409.313). No amendment would appear necessary to establish the validity of a perfected interest in a fixture, but an amendment may be necessary to make sure that the lessor's security interest in a fixture has the appropriate priority. Since there unlikely to be lots of competing security interests in property owned by the state, the "lessors" (a misnomer -- really the "sellers") may not care.

In sum, it doesn't appear that you need to amend the UCC for this draft, although we will put a short drafter's note on asking them to look at s. 409.313. You may want to talk to Pam to see whether any changes are needed in the real estate law.

Thanks.

Scott

K. Scott Hubli, Administrative Services Manager
Wisconsin Legislative Reference Bureau
(608) 266-0135
scott.hubli@legis.state.wi.us

1999

Date (time) needed

*DNOTES
SOON*

LRB - 1495, 1

JKR : kmq :

DOA BUDGET DRAFT

Use the appropriate components and routines developed for bills.

>>FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION<<

AN ACT . . . [DO NOT generate catalog]; relating to: ~~the budget.~~ *the state*
master lease program and making an appropriation.

Analysis by the Legislative Reference Bureau

For the 3 titles used in an analysis, in the component bar:

For the main heading [old =M], execute: create → anal: → title: → head

For the subheading [old =S], execute: create → anal: → title: → sub

For the sub-subheading [old =P], execute: create → anal: → title: → sub-sub

attached

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

SECTION #.

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1495/lins2
JTK.....

head State government
sub Other state government

Currently, the department of administration (DOA) may enter into a "master lease" for the lease of goods or the provision of services on behalf of one or more state agencies. This procedure may be used in lieu of direct procurement of goods or services and in some cases is used to finance the acquisition of goods by the state.

This bill permits DOA to use a master lease to obtain any property (real or personal) or services on behalf of a state agency, except that DOA may not use a master lease to obtain facilities for use or occupancy by the state or to obtain internal improvements (public works).

The bill also permits DOA to use a master lease to obtain any property or services related to public security functions on behalf of a local government. In addition, the bill permits DOA to enter into escrow agreements to facilitate the use of a master lease.

Currently, DOA may undertake energy conservation construction projects. These projects are different from other state building projects in that they are undertaken outside the authorized state building program and are not subject to public notice and bidding requirements. Under such a project, the contractor guarantees energy savings to be realized by the state in a minimum stated amount within a specified period, and if the savings are not realized by the state within that period, the contractor pays the difference between the cost of the project and the savings realized. The bill provides that if a master lease is used to finance payments to be made to a contractor who is engaged in an energy conservation construction project, the payments under the lease may not be conditioned upon any payment required to be made by the contractor resulting from the contractor's guarantee.

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

Section #. 16.76 (4) (a) of the statutes is amended to read:

16.76 (4) (a) In this subsection, "master lease" means an agreement entered into by the department ^{To obtain property or} on behalf of one or more agencies for the lease of goods or the provision of services under which ~~(a) The department may act on behalf of one or more agencies or municipalities.~~ the department makes or agrees to make periodic payments. The department may pay or agree to pay to the lessor ^{under a master lease} a sum substantially equivalent to or in excess of the aggregate value of goods ~~involved~~ ^{property or services obtained} and it may be agreed that the department or one or more agencies ^{or municipalities} will become, or for no other or nominal consideration has the option to become, the owner of goods ~~leased or to be leased~~ ^{property obtained or to be obtained under} upon full compliance with the ~~terms of the agreement.~~ ^{its} ~~→ 16.76 (4) (a)~~ ^{SECTION #. CR 16.76 (4) (a)} Any master lease entered ^a ~~into~~ ^{lease}

History: 1973 c. 333; 1977 c. 196 s. 130 (3); 1979 c. 34; 1983 a. 27; 1985 a. 29; 1987 a. 119, 142; 1989 a. 31; 1991 a. 39; 1993 a. 496; 1995 a. 27.

~~into by the department on behalf of a municipality under~~
~~this paragraph may be used only to obtain property or~~
~~services related to public security functions of the municipality.~~

~~The department shall enter into an installment~~
~~sales contract with a municipality with respect to~~
~~any property or services obtained by the municipality~~
~~under a master lease. The municipality shall issue~~
~~a promissory note to the department as security for~~
~~any such property or services obtained or to be obtained.~~

Section #. 16.76 (4) (b) of the statutes is amended to read:

16.76 (4) (b) ~~The~~ Except as provided in par. (h), the department may enter into a master lease whenever the department determines that it is advantageous to the state to do so. If the master lease provides for payments to be made by the state from moneys that have not been appropriated at the time that the master lease is entered into, the master lease shall contain the statement required under s. 16.75 (3).

History: 1973 c. 333; 1977 c. 196 s. 130 (3); 1979 c. 34; 1983 a. 27; 1985 a. 29; 1987 a. 119, 142; 1989 a. 31; 1991 a. 39; 1993 a. 496; 1995 a. 27.

Section #. 16.76 (4) (c) of the statutes is amended to read:

16.76 (4) (c) Payments under a master lease may include interest payable at a fixed or variable rate as the master lease may provide. The department may enter into agreements and ancillary arrangements to facilitate the use of a master lease, including liquidity facilities, remarketing or dealer agreements, letter of credit agreements, insurance policies, interest rate guaranty agreements, reimbursement agreements and [↑] indexing agreements and escrow agreements

History: 1973 c. 333; 1977 c. 196 s. 130 (3); 1979 c. 34; 1983 a. 27; 1985 a. 29; 1987 a. 119, 142; 1989 a. 31; 1991 a. 39; 1993 a. 496; 1995 a. 27.

Section #. 16.76 (4) (e) of the statutes is amended to read:

16.76 (4) (e) The department may grant ~~the lessor~~ a perfected security interest in ~~goods leased~~ ^{property obtained} or to be leased ^{obtained} under each ^{of a} master lease. The department shall record and preserve evidence of the security interest in its offices at all times during which the master lease is in effect.

~~History: 1973 c. 333; 1977 c. 196 s. 130 (3); 1979 c. 34; 1983 a. 27; 1985 a. 29; 1987 a. 119, 142; 1989 a. 31; 1991 a. 39; 1993 a. 496; 1995 a. 27.~~

Section #. 16.76 (4) (f) of the statutes is amended to read:

16.76 (4) (f) The department may appoint one or more fiscal agents for each master lease. Each fiscal agent shall be an incorporated bank or trust company authorized by the laws of the United States or of the state in which it is located to do business as a banking or trust company. ~~Sections 16.705 and 16.75 do not apply to contracts for fiscal agent services.~~ The department shall periodically require competitive proposals, under procedures established by the department, for fiscal agent services under this paragraph. There may be deposited with a fiscal agent, in a special account for such purpose only, a sum estimated to be sufficient to enable the fiscal agent to make all payments which will come due under the master lease not more than 15 days after the date of deposit. The department may make such other provisions respecting fiscal agents as it considers necessary or useful and may enter into a contract with any fiscal agent containing such terms, including compensation, and conditions in regard to the fiscal agent as it considers necessary or useful.

~~History: 1973 c. 333; 1977 c. 196 s. 130(3); 1979 c. 34; 1983 a. 27; 1985 a. 29; 1987 a. 119, 142; 1989 a. 31; 1991 a. 39; 1993 a. 496; 1995 a. 27.~~

TYPED

SECTION 5. 16.76 (4) (g) of the statutes is created to read:

16.76 (4) (g) Sections 16.705 and 16.75 do not apply to agreements or ancillary agreements under ~~paragraph (b)~~ ^{par. (c)} or contracts for fiscal agency services under ~~paragraph (f)~~ ^{par.} *agent*

SECTION 6. 16.76 (4) (h) of the statutes is created to read:

16.76 (4) (h) A master lease may not be used to obtain a facility for use or occupancy by the state or an agency ~~department~~ ^{department} or instrumentality of the state or to obtain an internal improvement.

SECTION 7. 16.76 (4) (i) of the statutes is created to read:

16.76 (4) (i) A master lease may not provide that the right of the department or any ^{other} agency of the state ~~to~~ ^{to} obtain property or services under the ~~master~~ ^{be} lease depends on payments to ~~be~~ ^{be} made by a ~~unit of local government~~ ^{be municipality} for property or services obtained by the ~~unit of local government~~ ^{municipality} under the ~~master~~ ^{municipality} lease unless the obligation of the ~~unit of local government~~ ^{municipality} to make those payments constitutes a general obligation.

SECTION 8. 20.505 (10) of the statutes is created to read:

20.505 (10) MASTER LEASE. As a continuing appropriation, to be applied to payments under the related master lease, all payments made or to be made by units of local government with respect to property or services obtained under a master lease under s. 16.76 (4)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1495/lins
JTK.....

SECTION 1. 16.76 (4) (j) of the statutes is created to read:

16.76 (4) (j) If a master lease is used to finance payments to be made under an energy conservation construction project as provided in s. 16.858 (2), payments under the lease may not be conditioned upon any payment required to be made by the contractor pursuant to an energy conservation audit.

~~SECTION 2. 20.505 (1) (ip) of the statutes is created to read:~~

~~20.505 (1) (ip) *Master lease payments.* All moneys received from municipalities with respect to property or services obtained under master leases as provided in s. 16.76 (4), to be applied to make the payments required under the related master leases.~~

Section #. 16.858 (2) of the statutes is amended to read:

renumbered 16.858(2)(a) and amended to read:

16.858 (2)^(a) Any contract under sub. (1) shall require the contractor to undertake the construction work at its own expense. The contract shall provide for the state to pay a maximum stated amount, which shall include any financing costs incurred by the contractor. The maximum stated amount may not exceed the minimum savings determined under the audit to be realized by the state within the period specified in the audit. The state shall make payments under the contract as the savings identified in the audit are realized by the state, in the amounts actually realized, but not to exceed the lesser of the maximum stated amount or the actual amount of the savings realized by the state within the period specified in the audit. ^(b) The department shall charge the cost of the payments to the applicable appropriation for fuel and utility costs at the building, structure or facility where the work is performed in the amounts equivalent to the savings that accrue to the state under that appropriation from expenditures not made as a result of the construction work, as determined by the department in accordance with the contract. The department may also charge its costs for negotiation and administration of the contract to the same appropriation.

~~History: 1997 a. 27.~~

any portion of
The department may finance any the cost of the construction work, ~~may~~ including any cost incurred by the contractor ~~in~~ pursuant to the audit, under a master lease entered into as provided under s. 16.76(4). No such ~~such~~ financing arrangement affects the liability of the contractor under this section.

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1495/lins
JTK.....

SECTION 1. 20.505 (1)(ip) of the statutes is created to read:

20.505 (1)(ip) *Master lease payments*. All moneys received from municipalities with respect to property or services obtained under master leases as provided in s. 16.76 (4), to be applied to make the payments required under the related master leases.

→ note: bud

(End)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1495/1dn

JTK.../.....

img

5

1. This draft combines the requests that were requested and entered as LRB-1495 and LRB-1678. LRB-1678 will not be drafted.

2. This draft melds together the drafting instructions submitted by Reed Groethe with the instructions forwarded from Frank Hoadley and your e-mails concerning the governor's decisions (particularly, limiting the use of master leases on behalf of local governments to support public security functions). If any of these instructions are intended to be superceded by other instructions, we may need to redraft.

3. One potential conflict in the instructions involves the use of the term "property". Because Reed Groethe chose this word very deliberately, I have used it, despite your expressed intent not to use master leases to finance the acquisition of real property. The draft precludes the use of master leases to finance the acquisition of certain kinds of real property [see proposed s. 16.76 (4)(h)]. I think in your discussions with the governor, you may be conceiving of real property in the way described in proposed s. 16.76 (4)(h), so that paragraph may address your concern. If not, again, we will have to redraft. ✓

4. Note that I have used the term "agency" to encompass all state agencies, including departments, and have used the term "municipality" to encompass all local governments because these terms are defined in s. 16.70, stats.

5. This draft does not specifically authorize local governments to issue promissory notes to provide security under master leases. You suggest we should amend ch. 66, stats. to accomplish this (I suggest ch. 67). I am wondering whether you wanted to amend a specific provision or you wanted to create something independent of what is there. I will take care of this on the next draft if you will advise. *that*

6. As you note, if the courts conclude that state participation in financing of property or services provided to a local government effectively lends the credit of the state to that local government, the use of master leases for that purpose would contravene art. VIII, sec. 3, of the Wisconsin constitution.

Insert D-7

Insert D-8

Jeffery T. Kuesel
Managing Attorney
266-6778

→ PJK
→ KSH

Insert D-7

Q 7. ~~Q~~ Do you want to exclude
master leases from the application
of ch. 704, which applies to
leases "transferring possession of
real property, or both real and
personal property"?

(end of ins. D-7)

Insert D-8:

¶ 8. Section 409.302(1)(i) provides that a UCC financing statement is not required to perfect a security interest created under a state master lease. Section 409.313(4) governs the priority of perfected security interests in fixtures. ~~Does it need~~ Do the priority provisions need to be amended to ~~govern~~ reflect the fact that fixtures may be "leased" under the state's master lease program. ~~Also, does it~~

conflicting

~~Also, does it~~ Section 411.309 also has ~~pro~~ provisions governing the perfected interest of a lessor of fixtures. Please let me know if any of these priority provisions need to be changed.

Priority of a

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1495/1dn
JTK&PJK&KSH:kmg:ijs

January 25, 1999

1. This draft combines the requests that were requested and entered as LRB-1495 and LRB-1678. LRB-1678 will not be drafted.

2. This draft melds together the drafting instructions submitted by Reed Groethe with the instructions forwarded from Frank Hoadley and your e-mails concerning the governor's decisions (particularly, limiting the use of master leases on behalf of local governments to support public security functions). If any of these instructions are intended to be superseded by other instructions, we may need to redraft.

3. One potential conflict in the instructions involves the use of the term "property". Because Reed Groethe chose this word very deliberately, I have used it, despite your expressed intent not to use master leases to finance the acquisition of real property. The draft precludes the use of master leases to finance the acquisition of certain kinds of real property [see proposed s. 16.76 (4) (h)]. I think in your discussions with the governor, you may be conceiving of real property in the way described in proposed s. 16.76 (4) (h), so that paragraph may address your concern. If not, again, we will have to redraft.

4. Note that I have used the term "agency" to encompass all state agencies, including departments, and have used the term "municipality" to encompass all local governments because these terms are defined in s. 16.70, stats.

5. This draft does not specifically authorize local governments to issue promissory notes to provide security under master leases. You suggest that we should amend ch. 66, stats., to accomplish this (I suggest ch. 67). I am wondering whether you wanted to amend a specific provision or you wanted to create something independent of what is there. I will take care of this on the next draft if you will advise.

6. As you note, if the courts conclude that state participation in financing of property or services provided to a local government effectively lends the credit of the state to that local government, the use of master leases for that purpose would contravene art. VIII, sec. 3, of the Wisconsin Constitution.

7. Do you want to exclude master leases from the application of ch. 704, which applies to leases "transferring possession of real property, or both real and personal property"?

8. Section 409.302 (1) (i) provides that a UCC financing statement is not required to perfect a security interest created under a state master lease. Section 409.313 (4) governs the priority of conflicting perfected security interests in fixtures. Do the

priority provisions need to be amended to reflect the fact that fixtures may be "leased" under the state's master lease program? Section 411.309 also has provisions governing the priority of a perfected interest of a lessor of fixtures. Please let me know if any of these priority provisions need to be changed.

Jeffery T. Kuesel
Managing Attorney
266-6778

Pamela J. Kahler
Senior Legislative Attorney
266-2682

K. Scott Hubli
Administrative Services Manager
266-0135



(DNSTB)
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1495/H 2
JTK:kmg:ijs

wanted seen

DOA:.....Caucutt – Master leases for sales of equipment to local governments and energy conservation construction projects

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ^{DNSTB} ^{about it} ^{Sen Cal.} relating to: the state master lease program and making an
2 appropriation.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

OTHER STATE GOVERNMENT

Currently, the department of administration (DOA) may enter into a “master lease” for the lease of goods or the provision of services on behalf of one or more state agencies. This procedure may be used in lieu of direct procurement of goods or services and in some cases is used to finance the acquisition of goods by the state.

This bill permits DOA to use a master lease to obtain any property (real or personal) or services on behalf of a state agency, except that DOA may not use a master lease to obtain facilities for use or occupancy by the state or to obtain internal improvements (public works).

The bill also permits DOA to use a master lease to obtain any property or services related to public ^{safety} security functions on behalf of a local government. ~~In addition, the bill permits DOA to enter into escrow agreements to facilitate the use of a master lease.~~

Currently, DOA may undertake energy conservation construction projects. These projects are different from other state building projects in that they are undertaken outside the authorized state building program and are not subject to

Currently, the contractor must undertake construction of any project at its own expense. Under the bill, the state or the contractor may finance the cost of construction. If the savings resulting from the construction within the period specified in the audit are less than the amount specified in the contract, the contractor must remit the difference to the state.

public notice and bidding requirements. Under such a project, the contractor guarantees energy savings to be realized by the state in a ~~minimum~~ stated amount within a specified period, and, if the savings are not realized by the state within that period, the contractor ~~pay the~~ difference between the ~~cost of the project~~ and the savings realized. The bill provides that, if a master lease is used to finance payments to be made to a contractor who is engaged in ~~an energy conservation~~ construction project, the payments under the lease may not be conditioned upon any payment required to be made by the contractor resulting from the contractor's guarantee.

need not be paid by the state for any

For further information see the ~~state~~ fiscal estimate, which will be printed as an appendix to this bill. *such a) amount specified in the contract*

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

1 SECTION 1. 16.76 (4) (a) of the statutes is amended to read:

2 16.76 (4) (a) In this subsection, "master lease" means an agreement entered
3 into by the department ~~on behalf of one or more agencies for the lease of goods or the~~
4 ~~provision of to obtain property or services~~ under which the department makes or
5 agrees to make periodic payments.

6 (ag) The department may act on behalf of one or more agencies or
7 municipalities. The department may pay or agree to pay ~~to the lesser~~ under a master
8 lease a sum substantially equivalent to or in excess of the aggregate value of goods
9 involved property or services obtained and it may be agreed that the department or
10 one or more agencies or municipalities will become, or for no other or nominal
11 consideration has the option to become, the owner of ~~goods leased or to be leased~~
12 property obtained or to be obtained under a master lease upon full compliance with
13 the its terms of the agreement.

14 SECTION 2. 16.76 (4) (ar) of the statutes is created to read:

15 16.76 (4) (ar) Any master lease entered into by the department on behalf of a
16 municipality under this subsection may be used only to obtain property or services
17 related to public ^{safety} ~~security~~ functions of the municipality. The department shall enter

1 into an instalment sales contract with a municipality with respect to any property
2 or services obtained by the municipality under a master lease. The municipality
3 shall issue a ^{general obligation} promissory note to the department as security for any such property or
4 services obtained or to be obtained.

5 SECTION 3. 16.76 (4) (b) of the statutes is amended to read:

6 16.76 (4) (b) ~~The~~ Except as provided in par. (h), the department may enter into
7 a master lease whenever the department determines that it is advantageous to the
8 state to do so. If the master lease provides for payments to be made by the state from
9 moneys that have not been appropriated at the time that the master lease is entered
10 into, the master lease shall contain the statement required under s. 16.75 (3).

11 SECTION 4. 16.76 (4) (c) of the statutes is amended to read:

12 16.76 (4) (c) Payments under a master lease may include interest payable at
13 a fixed or variable rate as the master lease may provide. The department may enter
14 into agreements and ^{which the department determines to be necessary} ancillary arrangements to facilitate the use of a master lease,
15 including ~~liquidity facilities, remarketing or dealer agreements, letter of credit~~
16 ~~agreements, insurance policies, interest rate guaranty agreements, reimbursement~~
17 ~~agreements and indexing agreements and escrow agreements.~~

18 SECTION 5. 16.76 (4) (e) of the statutes is amended to read:

19 16.76 (4) (e) The department may grant ~~the lessor~~ a perfected security interest
20 in ~~goods leased~~ property obtained or to be leased obtained under each a master lease.
21 The department shall record and preserve evidence of the security interest in its
22 offices at all times during which the master lease is in effect.

23 SECTION 6. 16.76 (4) (f) of the statutes is amended to read:

24 16.76 (4) (f) The department may appoint one or more fiscal agents for each
25 master lease. Each fiscal agent shall be an incorporated bank or trust company

1 authorized by the laws of the United States or of the state in which it is located to
2 do business as a banking or trust company. ~~Sections 16.705 and 16.75 do not apply~~
3 ~~to contracts for fiscal agent services.~~ The department shall periodically require
4 competitive proposals, under procedures established by the department, for fiscal
5 agent services under this paragraph. There may be deposited with a fiscal agent, in
6 a special account for such purpose only, a sum estimated to be sufficient to enable the
7 fiscal agent to make all payments which will come due under the master lease not
8 more than 15 days after the date of deposit. The department may make such other
9 provisions respecting fiscal agents as it considers necessary or useful and may enter
10 into a contract with any fiscal agent containing such terms, including compensation,
11 and conditions in regard to the fiscal agent as it considers necessary or useful.

12 **SECTION 7.** 16.76 (4) (g) of the statutes is created to read:

13 16.76 (4) (g) Sections 16.705 and 16.75 do not apply to agreements or ancillary
14 agreements under par. (c) or contracts for fiscal agent services under par. (f).

15 **SECTION 8.** 16.76 (4) (h) of the statutes is created to read:

16 16.76 (4) (h) A master lease may not be used to obtain a facility for use or
17 occupancy by the state or an agency or instrumentality of the state or to obtain an
18 internal improvement.

19 **SECTION 9.** 16.76 (4) (i) of the statutes is created to read:

20 16.76 (4) (i) A master lease may not provide that the right of the department
21 or any other agency to obtain property or services under the lease depends on
22 payments to be made by a municipality for property or services obtained by the
23 municipality under the lease unless the obligation of the municipality to make those
24 payments constitutes a general obligation.

25 **SECTION 10.** 16.76 (4) (j) of the statutes is created to read:

1 16.76 (4) (j) If a master lease is used to finance payments to be made under an
2 energy conservation construction project as provided in s. 16.858 (2), payments
3 under the lease may not be conditioned upon any payment required to be made by
4 the contractor pursuant to an energy conservation audit.

5 SECTION 11. 16.858 (2) of the statutes is renumbered 16.858 (2) (a) and
6 amended to read:

7 16.858 (2) (a) ^A ~~Any~~ contract under sub. (1) shall require the contractor to ^{may provide for the construction work to be financed}
8 ~~undertake the construction work at its own expense.~~ The contract shall provide for ^{by}
9 the state to pay a ~~maximum~~ stated amount, which shall include any financing costs ^{the}
10 incurred by the contractor. The ~~maximum~~ ^{or} stated amount may not exceed the ^{by}
11 minimum savings determined under the audit to be realized by the state within the
12 period specified in the audit. The state shall make payments under the contract as
13 the savings identified in the audit are realized by the state, in the amounts actually
14 realized, but not to exceed the lesser of the ~~maximum~~ [✓] stated amount or the actual
15 amount of the savings realized by the state within the period specified in the audit.
16 ^{If the department provides financing for construction work, the} ~~The~~ department may finance any portion of the cost of the construction work
17 ~~including any cost incurred by the contractor pursuant to the audit~~ ^{work} under a master
18 lease entered into as provided under s. 16.76 (4). ^{IRS 5-18} ~~No such financing arrangement~~
19 ~~affects the liability of the contractor under this section.~~

20 (b) The department shall charge the cost of ^{made by the state to the} ~~the payments~~ ^{contractor} to the applicable
21 appropriation for fuel and utility costs at the building, structure or facility where the
22 work is performed in the amounts equivalent to the savings that accrue to the state
23 under that appropriation from expenditures not made as a result of the construction
24 work, as determined by the department in accordance with the contract. The

✓
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1 department may also charge its costs for negotiation ~~and~~ ^{and Financing} administration of the
2 contract to the same appropriation.

3 **SECTION 12.** 20.505 (1) (ip) of the statutes is created to read:

4 20.505 (1) (ip) *Master lease payments.* All moneys received from municipalities
5 with respect to property or services obtained under master leases as provided in s.
6 16.76 (4), to be applied to make the payments required under the related master
7 leases.

8 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

(END)

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1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1495/2ins
JTK.....

INS 5-18

~~may provide for the construction project to be financed by the state or by the~~
~~contractor.~~ ^{work} If the department provides financing for the construction ^{work} project, and the
stated amount to be paid by the state under the contract is greater than the amount
of the savings realized by the state within the period specified in the audit under sub.
(1), [✓] the contract shall require the contractor to remit the difference to the
department.

ANS 6-2

Section #. 16.858 (4) of the statutes is amended to read: ✓

16.858 (4) No later than January 1 of each year, the secretary shall report to the cochairpersons of the joint committee on finance identifying any construction work for which the department has contracted under this section for which ~~the state has not made its~~ final payment ^{has not been made} as of the date of the preceding report, together with the actual energy cost savings realized by the state as a result of the contract to date, or the estimated energy cost savings to be realized by the state if the total savings to be realized in the audit under sub. (1) have not yet been realized, ~~and~~ the date on which the state made its final payment under the contract or, if the final payment has not been made, the latest date on which the state is obligated to make its final payment under the contract, ^{and any amount} that remains payable to the state under the contract

~~History: 1997 a. 27.~~

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

LRB-1495/2dn

JTK.....

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I have amended s. 16.858 (4), stats. ^(c) to include in the status report any project that is still open because the contractor is liable to make a payment to the state which has not been made in full at the time the report is prepared. Let me know if this is not in accord with your intent.

what

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

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

LRB-1495/2dn
JTK:kmg:ijs

January 29, 1999

I have amended s. 16.858 (4), stats., to include in the status report any project that is still open because the contractor is liable to make a payment to the state which has not been made in full at the time that the report is prepared. Let me know if this is not in accord with your intent.

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



DNOTE
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1495/2³
JTK:kmg:ijs

Wanted soon

DOA:.....Caucutt - Master leases for sales of equipment to local governments
and energy conservation construction projects

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

- Don't
Gen Cat*
- 1 AN ACT relating to: the state master lease program and making an
2 appropriation.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

OTHER STATE GOVERNMENT

Currently, the department of administration (DOA) may enter into a "master lease" for the lease of goods or the provision of services on behalf of one or more state agencies. This procedure may be used in lieu of direct procurement of goods or services and in some cases is used to finance the acquisition of goods by the state.

This bill permits DOA to use a master lease to obtain any property (real or personal) or services on behalf of a state agency, except that DOA may not use a master lease to obtain facilities for use or occupancy by the state or to obtain internal improvements (public works).

The bill also permits DOA to use a master lease to obtain any property or services related to public safety functions on behalf of a local government.

Currently, DOA may undertake energy conservation construction projects. These projects are different from other state building projects in that they are undertaken outside the authorized state building program and are not subject to public notice and bidding requirements. Under such a project, the contractor guarantees energy savings to be realized by the state in a stated amount within a

specified period, and, if the savings are not realized by the state within that period, the contractor need not be paid by the state for any difference between the amount specified in the contract and the savings realized. Currently, the contractor must undertake construction of any project at its own expense. Under the bill, the state or the contractor may finance the cost of construction. If the savings resulting from the construction within the period specified in the audit are less than the amount specified in the contract, the contractor must remit the difference to the state. The bill provides that, if a master lease is used to finance payments to be made to a contractor who is engaged in such a construction project, the payments under the lease may not be conditioned upon any payment required to be made by the contractor resulting from the contractor's guarantee.

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

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

1 **SECTION 1.** 16.76 (4) (a) of the statutes is amended to read:

2 16.76 (4) (a) In this subsection, "master lease" means an agreement entered
3 into by the department ~~on behalf of one or more agencies for the lease of goods or the~~
4 ~~provision of to obtain property or services~~ under which the department makes or
5 agrees to make periodic payments.

6 ~~(ag) The department may act on behalf of one or more agencies or~~
7 ~~municipalities.~~ The department may pay or agree to pay ~~to the lessor under a master~~
8 ~~lease~~ a sum substantially equivalent to or in excess of the aggregate value of goods
9 ~~involved property or services obtained~~ and it may be agreed that the department or
10 one or more agencies or municipalities will become, or for no other or nominal
11 consideration has the option to become, the owner of goods ~~leased or to be leased~~
12 ~~property obtained or to be obtained under a master lease~~ upon full compliance with
13 the its terms of the agreement.

14 **SECTION 2.** 16.76 (4) (ar) of the statutes is created to read:

1 16.76 (4) (ar) Any master lease entered into by the department on behalf of a
2 municipality under this subsection may be used only to obtain property or services
3 related to public safety functions of the municipality. The department shall enter
4 into an instalment sales contract with a municipality with respect to any property
5 or services obtained by the municipality under a master lease. The municipality
6 shall issue a general obligation promissory note to the department as security for any
7 such property or services obtained or to be obtained.

8 **SECTION 3.** 16.76 (4) (b) of the statutes is amended to read:

9 16.76 (4) (b) ~~The~~ Except as provided in par. (h), the department may enter into
10 a master lease whenever the department determines that it is advantageous to the
11 state to do so. If the master lease provides for payments to be made by the state from
12 moneys that have not been appropriated at the time that the master lease is entered
13 into, the master lease shall contain the statement required under s. 16.75 (3).

14 **SECTION 4.** 16.76 (4) (c) of the statutes is amended to read:

15 16.76 (4) (c) Payments under a master lease may include interest payable at
16 a fixed or variable rate as the master lease may provide. The department may enter
17 into agreements and ancillary arrangements which the department determines to
18 be necessary to facilitate the use of a master lease, ~~including liquidity facilities,~~
19 ~~remarketing or dealer agreements, letter of credit agreements, insurance policies,~~
20 ~~interest rate guaranty agreements, reimbursement agreements and indexing~~
21 ~~agreements.~~

22 **SECTION 5.** 16.76 (4) (e) of the statutes is amended to read:

23 16.76 (4) (e) The department may grant ~~the lesser~~ a perfected security interest
24 in ~~goods leased~~ property obtained or to be leased obtained under each a master lease.

1 The department shall record and preserve evidence of the security interest in its
2 offices at all times during which the master lease is in effect.

3 **SECTION 6.** 16.76 (4) (f) of the statutes is amended to read:

4 16.76 (4) (f) The department may appoint one or more fiscal agents for each
5 master lease. Each fiscal agent shall be an incorporated bank or trust company
6 authorized by the laws of the United States or of the state in which it is located to
7 do business as a banking or trust company. ~~Sections 16.705 and 16.75 do not apply~~
8 ~~to contracts for fiscal agent services.~~ The department shall periodically require
9 competitive proposals, under procedures established by the department, for fiscal
10 agent services under this paragraph. There may be deposited with a fiscal agent, in
11 a special account for such purpose only, a sum estimated to be sufficient to enable the
12 fiscal agent to make all payments which will come due under the master lease not
13 more than 15 days after the date of deposit. The department may make such other
14 provisions respecting fiscal agents as it considers necessary or useful and may enter
15 into a contract with any fiscal agent containing such terms, including compensation,
16 and conditions in regard to the fiscal agent as it considers necessary or useful.

17 **SECTION 7.** 16.76 (4) (g) of the statutes is created to read:

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23 internal improvement.

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4 municipality under the lease unless the obligation of the municipality to make those
5 payments constitutes a general obligation.

6 **SECTION 10.** 16.76 (4) (j) of the statutes is created to read:

7 16.76 (4) (j) If a master lease is used to finance payments to be made under an
8 energy conservation construction project as provided in s. 16.858 (2), payments
9 under the lease may not be conditioned upon any payment required to be made by
10 the contractor pursuant to an energy conservation audit.

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12 amended to read:

13 16.858 (2) (a) Any A contract under sub. (1) shall require may provide for the
14 construction work to be financed by the state or by the contractor to undertake the
15 construction work at its own expense. The contract shall provide for the state to pay
16 a ~~maximum~~ stated amount, which shall include any financing costs incurred by the
17 contractor. The ~~maximum~~ stated amount may not exceed the minimum savings
18 determined under the audit to be realized by the state within the period specified in
19 the audit. The state shall make payments under the contract as the savings
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22 savings realized by the state within the period specified in the audit. If the
23 department provides financing for construction work, the department may finance
24 any portion of the cost of the work under a master lease entered into as provided
25 under s. 16.76 (4). If the department provides financing for the construction work

1 and the stated amount to be paid by the state under the contract is greater than the
2 amount of the savings realized by the state within the period specified in the audit
3 under sub. (1), the contract shall require the contractor to remit the difference to the
4 department.

5 (b) The department shall charge the cost of the payments made by the state to
6 the contractor to the applicable appropriation for fuel and utility costs at the
7 building, structure or facility where the work is performed in the amounts equivalent
8 to the savings that accrue to the state under that appropriation from expenditures
9 not made as a result of the construction work, as determined by the department in
10 accordance with the contract. The department may also charge its costs for
11 negotiation and, administration and financing of the contract to the same
12 appropriation.

13 **SECTION 12.** 16.858 (4) of the statutes is amended to read:

14 16.858 (4) No later than January 1 of each year, the secretary shall report to
15 the cochairpersons of the joint committee on finance identifying any construction
16 work for which the department has contracted under this section for which ~~the state~~
17 ~~has not made its final payment~~ has not been made as of the date of the preceding
18 report, together with the actual energy cost savings realized by the state as a result
19 of the contract to date, or the estimated energy cost savings to be realized by the state
20 if the total savings to be realized in the audit under sub. (1) have not yet been
21 realized, and the date on which the state made its final payment under the contract
22 or, if the final payment has not been made, the latest date on which the state is
23 obligated to make its final payment under the contract, and any amount that
24 remains payable to the state under the contract.

25 **SECTION 13.** 20.505 (1) (ip) of the statutes is created to read:

1 20.505 (1) (ip) *Master lease payments*. All moneys received from municipalities
2 with respect to property or services obtained under master leases as provided in s.
3 16.76 (4), to be applied to make the payments required under the related master
4 leases.

 ****NOTE: This SECTION involves a change in an appropriation that must be
 reflected in the revised schedule in s. 20.005, stats.

5

(END)



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1495/3dn

JTK...:....



This redraft inserts 2 proofreading corrections: a) the 2nd to last sentence of the analysis is corrected; and b) the draft uses the term "stated amount" rather than "maximum stated amount" consistently in s. 16.858 (2)(a), stats., which I think is correct. The term "maximum stated amount" is confusing.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1495/3dn
JTK:kmg:hmh

Friday, January 29, 1999

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Managing Attorney
Phone: (608) 266-6778

Hubli, Scott

From: Groethe, Reed [reed.groethe@foleylaw.com]
Sent: Saturday, January 30, 1999 3:36 PM
To: Hubli, Scott
Cc: Ryan, David B.; Hoadley, Frank; Erdman, David
Subject: LRB--1495/1 (Master leases for sale of equipment to local governments and energy conservation projects)

Scott: Frank Hoadley asked us to respond to the UCC question raised in the drafter's note to the master lease bill.

* We recommend creating a new paragraph in Section 409.313 (4):

Section 409.313 (4) (e) The security interest is created by a master lease entered into by the state under s. 16.76 (4) and is perfected under that statute before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate. ▾

As a result of this provision, a security interest given in a fixture under a master lease would be treated the same as a security interest given in equipment under a master lease. As you will see, the format for the suggested paragraph follows that of paragraph (e).

* Chapter 411 (Leases) does not apply to a master lease. Although called a "lease", a master lease is an installment sale for purposes of the UCC. See s. 411.103 (1) (j). ✓

* We recommend moving the filing-provision exception for a security interest created by a master lease. The text of the exception, which currently appears as paragraph (h) in s. 409.302 (1), would be better placed in s. 409.302 (3), as a new paragraph (e).



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1495/4
JTK:kmg:hmh

4
KSH

DOA:.....Caucutt – Master leases for sales of equipment to local governments
and energy conservation construction projects

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

TODAY

1 AN ACT *do not* *for cast.*; relating to: the state master lease program and making an
2 appropriation.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

OTHER STATE GOVERNMENT

Currently, the department of administration (DOA) may enter into a "master lease" for the lease of goods or the provision of services on behalf of one or more state agencies. This procedure may be used in lieu of direct procurement of goods or services and in some cases is used to finance the acquisition of goods by the state.

This bill permits DOA to use a master lease to obtain any property (real or personal) or services on behalf of a state agency, except that DOA may not use a master lease to obtain facilities for use or occupancy by the state or to obtain internal improvements (public works).

The bill also permits DOA to use a master lease to obtain any property or services related to public safety functions on behalf of a local government.

Currently, DOA may undertake energy conservation construction projects. These projects are different from other state building projects in that they are undertaken outside the authorized state building program and are not subject to public notice and bidding requirements. Under such a project, the contractor guarantees energy savings to be realized by the state in a stated amount within a

specified period, and, if the savings are not realized by the state within that period, the contractor need not be paid by the state for any difference between the amount specified in the contract and the savings realized. Currently, the contractor must undertake construction of any project at its own expense. Under the bill, the state or the contractor may finance the cost of construction. If the state finances the cost of construction and the savings resulting from the construction within the period specified in the audit are less than the amount specified in the contract, the contractor must remit the difference to the state. The bill provides that, if a master lease is used to finance payments to be made to a contractor who is engaged in such a construction project, the payments under the lease may not be conditioned upon any payment required to be made by the contractor resulting from the contractor's guarantee.

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

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

1 **SECTION 1.** 16.76 (4) (a) of the statutes is amended to read:

2 16.76 (4) (a) In this subsection, "master lease" means an agreement entered
3 into by the department ~~on behalf of one or more agencies for the lease of goods or the~~
4 ~~provision of to obtain property or services~~ under which the department makes or
5 agrees to make periodic payments.

6 ~~(ag) The department may act on behalf of one or more agencies or~~
7 ~~municipalities.~~ The department may pay or agree to pay ~~to the lessor under a master~~
8 ~~lease~~ a sum substantially equivalent to or in excess of the aggregate value of goods
9 ~~involved property or services obtained~~ and it may be agreed that the department or
10 one or more agencies ~~or municipalities~~ will become, or for no other or nominal
11 consideration has the option to become, the owner of goods ~~leased or to be leased~~
12 ~~property obtained or to be obtained under a master lease~~ upon full compliance with
13 ~~the its~~ terms of the agreement.

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3 related to public safety functions of the municipality. The department shall enter
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5 or services obtained by the municipality under a master lease. The municipality
6 shall issue a general obligation promissory note to the department as security for any
7 such property or services obtained or to be obtained.

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9 16.76 (4) (b) The Except as provided in par. (h), the department may enter into
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11 state to do so. If the master lease provides for payments to be made by the state from
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13 into, the master lease shall contain the statement required under s. 16.75 (3).

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15 16.76 (4) (c) Payments under a master lease may include interest payable at
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5

(END)

Insert 7-4 ✓

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1495/4ins
KSH:.....

Insert 7-4:

1 SECTION 1. 409.302 (3) (intro.)^x of the statutes is amended to read:

2 409.302 (3) (intro.) The filing provisions of this chapter are not necessary or
3 effective to perfect a security interest in property subject to any of the following:

4 SECTION 2. 409.302 (3) (a) to (c)^x of the statutes is amended to read:

5 409.302 (3) (a) A statute or treaty of the United States which provides for a
6 national or international registration or a national or international certificate of title
7 or which specifies a place of filing different from that specified in this chapter for
8 filing of the security interest;~~or.~~[✓]

9 (b) The following vehicle title statutes: ss. 342.19, 342.20, 342.284 and 342.285;
10 but during any period in which collateral is inventory held for sale by a person who
11 is in the business of selling goods of that kind, the filing provisions of ss. 409.401 to
12 409.408 apply to a security interest in that collateral created by that person as
13 debtor;~~or.~~[✓]

14 (bm) The following boat title statutes: ss. 30.57, 30.572 and 30.573; but during
15 any period in which collateral is inventory held for sale by a person who is in the
16 business of selling goods of that kind, the filing provisions of ss. 409.401 to 409.408
17 apply to a security interest in that collateral created by that person as debtor;~~or.~~[✓]

18 (c) A certificate of title statute of another jurisdiction under the law of which
19 indication of a security interest on the certificate is required as a condition of
20 perfection (s. 409.103 (2));~~or.~~[✓]

History: 1973 c. 215; 1985 a. 187, 237; 1989 a. 31; 1991 a. 39, 148, 310; 1995 a. 449; 1997 a. 297.

21 SECTION 3. 409.302 (1) (i)^x of the statutes is renumbered 409.302 (3) (e)[✓] and

22 amended to read:



3003

MOVE to beginning of ins 7-4

1 409.302 (3) (e) A security interest created by a master lease entered into by the
2 state under s. 16.76 (4).

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1495/4
JTK&KSH:kmg&jlg:hmh

DOA:.....Caucutt – Master leases for sales of equipment to local governments
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FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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24 any portion of the cost of the work under a master lease entered into as provided
25 under s. 16.76 (4). If the department provides financing for the construction work

1 and the stated amount to be paid by the state under the contract is greater than the
2 amount of the savings realized by the state within the period specified in the audit
3 under sub. (1), the contract shall require the contractor to remit the difference to the
4 department.

5 (b) The department shall charge the cost of the payments made by the state to
6 the contractor to the applicable appropriation for fuel and utility costs at the
7 building, structure or facility where the work is performed in the amounts equivalent
8 to the savings that accrue to the state under that appropriation from expenditures
9 not made as a result of the construction work, as determined by the department in
10 accordance with the contract. The department may also charge its costs for
11 negotiation ~~and~~, administration and financing of the contract to the same
12 appropriation.

13 **SECTION 12.** 16.858 (4) of the statutes is amended to read:

14 16.858 (4) No later than January 1 of each year, the secretary shall report to
15 the cochairpersons of the joint committee on finance identifying any construction
16 work for which the department has contracted under this section for which ~~the state~~
17 ~~has not made its final payment~~ has not been made as of the date of the preceding
18 report, together with the actual energy cost savings realized by the state as a result
19 of the contract to date, or the estimated energy cost savings to be realized by the state
20 if the total savings to be realized in the audit under sub. (1) have not yet been
21 realized, and the date on which the state made its final payment under the contract
22 or, if the final payment has not been made, the latest date on which the state is
23 obligated to make its final payment under the contract, and any amount that
24 remains payable to the state under the contract.

25 **SECTION 13.** 20.505 (1) (ip) of the statutes is created to read:

1 20.505 (1) (ip) *Master lease payments*. All moneys received from municipalities
2 with respect to property or services obtained under master leases as provided in s.
3 16.76 (4), to be applied to make the payments required under the related master
4 leases.

 ****NOTE: This SECTION involves a change in an appropriation that must be
reflected in the revised schedule in s. 20.005, stats.

5 **SECTION 14.** 409.302 (1) (i) of the statutes is renumbered 409.302 (3) (e) and
6 amended to read:

7 409.302 (3) (e) ~~A security interest created by a master lease entered into by the~~
8 state under s. 16.76 (4).

9 **SECTION 15.** 409.302 (3) (intro.) of the statutes is amended to read:

10 409.302 (3) (intro.) The filing provisions of this chapter are not necessary or
11 effective to perfect a security interest in property subject to any of the following:

12 **SECTION 16.** 409.302 (3) (a) to (c) of the statutes are amended to read:

13 409.302 (3) (a) A statute or treaty of the United States which provides for a
14 national or international registration or a national or international certificate of title
15 or which specifies a place of filing different from that specified in this chapter for
16 filing of the security interest; ~~or,~~

17 (b) The following vehicle title statutes: ss. 342.19, 342.20, 342.284 and 342.285;
18 but during any period in which collateral is inventory held for sale by a person who
19 is in the business of selling goods of that kind, the filing provisions of ss. 409.401 to
20 409.408 apply to a security interest in that collateral created by that person as
21 debtor; ~~or,~~

22 (bm) The following boat title statutes: ss. 30.57, 30.572 and 30.573; but during
23 any period in which collateral is inventory held for sale by a person who is in the

1 business of selling goods of that kind, the filing provisions of ss. 409.401 to 409.408
2 apply to a security interest in that collateral created by that person as debtor; ~~or,~~

3 (c) A certificate of title statute of another jurisdiction under the law of which
4 indication of a security interest on the certificate is required as a condition of
5 perfection (s. 409.103 (2)); ~~or,~~

6 **SECTION 17.** 409.313 (4) (e) of the statutes is created to read:

7 409.313 (4) (e) The security interest is created by a master lease entered into
8 by the state under s. 16.76 (4), the security interest is perfected under s. 16.76 (4) (e)
9 before the interest of the encumbrancer or owner is of record, the security interest
10 has priority over any conflicting interest of a predecessor in title of the encumbrancer
11 or owner and the debtor has an interest of record in the real estate.

12

(END)