

2005 Assembly Bill 105

Date of enactment: **January 4, 2006**
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AN ACT *to renumber and amend* 16.705 (8); *to amend* 13.093 (2) (a), 16.705 (1), 16.705 (2) and 84.01 (13); and *to create* 16.70 (3g) and 16.705 (8) (a) and (b) of the statutes; **relating to:** state contractual service contracting procedures and information and fiscal estimate cost mitigation analyses, granting rule-making authority, and providing an exemption from and extending the time limit for emergency rule procedures.

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

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

13.093 (2) (a) Any bill making an appropriation, any bill increasing or decreasing existing appropriations or state or general local government fiscal liability or revenues, and any bill that modifies an existing surcharge or creates a new surcharge that is imposed under ch. 814, shall, before any vote is taken thereon by either house of the legislature if the bill is not referred to a standing committee, or before any public hearing is held before any standing committee or, if no public hearing is held, before any vote is taken by the committee, incorporate a reliable estimate of the anticipated change in appropriation authority or state or general local government fiscal liability or revenues under the bill, including to the extent possible a projection of such changes in future biennia. The estimate shall also indicate whether any increased costs incurred by the state under the bill can be mitigated through the use of contractual service contracts let in accordance with competitive procedures. For purposes of this paragraph, a bill increasing or decreasing the liability or revenues of the unemployment reserve fund

is considered to increase or decrease state fiscal liability or revenues. Except as otherwise provided by joint rules of the legislature or this paragraph, such estimates shall be made by the department or agency administering the appropriation or fund or collecting the revenue. The joint survey committee on retirement systems shall prepare the fiscal estimate with respect to the provisions of any bill referred to it which create or modify any system for, or make any provision for, the retirement of or payment of pensions to public officers or employees. The director of state courts shall prepare the fiscal estimate with respect to the provisions of any bill that modifies an existing surcharge or creates a new surcharge that is imposed under ch. 814. When a fiscal estimate is prepared after the bill has been introduced, it shall be printed and distributed as are amendments.

SECTION 2. 16.70 (3g) of the statutes is created to read:

16.70 (3g) “Cost-benefit analysis” means a comprehensive study to identify and compare the total cost, quality, technical expertise, and timeliness of a service performed by state employees and resources with the total cost, quality, technical expertise, and timeliness of the same service obtained by means of a contract for contractual services.

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

SECTION 3. 16.705 (1) of the statutes is amended to read:

16.705 (1) The department or its agents may contract for services which can be performed more economically or efficiently by such contract. The department shall, by rule, prescribe uniform procedures for determining whether services are appropriate for contracting under this subsection.

SECTION 4. 16.705 (2) of the statutes is amended to read:

16.705 (2) The department shall promulgate rules for the procurement of contractual services by the department and its designated agents, including but not limited to the rules prescribing approval and monitoring processes for contractual service contracts, a requirement for agencies to conduct a uniform cost-benefit analysis of each proposed contractual service procurement involving an estimated expenditure of more than \$25,000 in accordance with standards prescribed in the rules, and a requirement for agencies to review periodically, and before any renewal, the continued appropriateness of contracting under each contractual services agreement involving an estimated expenditure of more than \$25,000. Each officer requesting approval to engage any person to perform contractual services shall submit to the department written justification for such contracting which shall include a description of the contractual services to be procured, justification of need, justification for not contracting with other agencies, a specific description of the scope of contractual services to be performed, and justification for the procurement process if a process other than competitive bidding is to be used. The department may not approve any contract for contractual services unless it is satisfied that the justification for contracting conforms to the requirements of this section and ss. 16.71 to 16.77.

SECTION 5. 16.705 (8) of the statutes is renumbered 16.705 (8) (intro.) and amended to read:

16.705 (8) (intro.) The department shall, annually on or before October 15, submit to the governor, the joint committee on finance, the joint legislative audit committee and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3), a report concerning the number, value and nature of contractual service procurements authorized for each agency during the preceding fiscal year. The report shall also include, with respect to contractual service procurements by agencies for the preceding fiscal year:

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

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

(b) Recommendations for elimination of unneeded contractual service procurements and for consolidation

or resolicitation of existing contractual service procurements.

SECTION 7. 84.01 (13) of the statutes is amended to read:

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

SECTION 8. Nonstatutory provisions.

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

(2) EMERGENCY RULES ON CONTRACTUAL SERVICE PROCUREMENT. Using the procedure under section 227.24 of the statutes, the departments of administration and transportation, respectively, shall, no later than the first day of the 6th month beginning after the effective date of this subsection, promulgate the rules required under sections 16.705 and 84.01 (13) of the statutes, as affected by this act, as emergency rules, which shall be in effect for the period before the effective date of the permanent rules promulgated under sections 16.705 and 84.01 (13) of the statutes, as affected by this act. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the departments of administration and transportation are not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and are not required to provide a finding of emergency for a rule promulgated under this subsection.

SECTION 9. Initial applicability.

(1) The treatment of section 13.093 (2) (a) of the statutes first applies with respect to fiscal estimates ordered on the first day of the 6th month beginning after publication.

(2) The treatment of sections 16.705 (2) and 84.01 (13) of the statutes first applies with respect to sollicita-

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tions for contractual services issued on the effective date of emergency rules promulgated under SECTION 8 (2).

(3) The renumbering and amendment of section 16.705 (8) of the statutes and the creation of section

16.705 (8) (a) and (b) of the statutes first apply with respect to the report that is due for submittal on October 15, 2006.

