

## 2005 ASSEMBLY BILL 105

February 17, 2005 – Introduced by Representatives GOTTLIEB, JENSEN, DAVIS, GRONEMUS, GUNDERSON, HAHN, HINES, HONADEL, KAUFERT, KRAWCZYK, F. LASEE, LEMAHIEU, MCCORMICK, MOULTON, MUSSER, NASS, NISCHKE, OTT, OWENS, PRIDEMORE, STASKUNAS and VAN ROY, cosponsored by Senators COWLES, ELLIS, BROWN, DARLING, S. FITZGERALD, KAPANKE, A. LASEE, LAZICH, LEIBHAM, OLSEN, ROESSLER and ZIEN. Referred to Committee on Budget Review.

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

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### ***Analysis by the Legislative Reference Bureau***

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

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

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

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

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

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

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

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

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

13 **SECTION 2.** 16.705 (1) of the statutes is amended to read:

14 16.705 (1) The department or its agents may contract for services which can  
15 be performed more economically or efficiently by such contract. The department  
16 shall, by rule, prescribe uniform procedures for determining whether services are  
17 appropriate for contracting under this subsection.

18 **SECTION 3.** 16.705 (2) of the statutes is amended to read:

19 16.705 (2) The department shall promulgate rules for the procurement of  
20 contractual services by the department and its designated agents, including but not  
21 limited to the rules prescribing approval and monitoring processes for contractual  
22 service contracts, a requirement for agencies to conduct a uniform cost-benefit  
23 analysis of each proposed contractual service procurement in accordance with  
24 standards prescribed in the rules, and a requirement for agencies to review  
25 periodically the continued appropriateness of contracting under each contractual

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1 services agreement. Each officer requesting approval to engage any person to  
2 perform contractual services shall submit to the department written justification for  
3 such contracting which shall include a description of the contractual services to be  
4 procured, justification of need, justification for not contracting with other agencies,  
5 a specific description of the scope of contractual services to be performed, and  
6 justification for the procurement process if a process other than competitive bidding  
7 is to be used. The department may not approve any contract for contractual services  
8 unless it is satisfied that the justification for contracting conforms to the  
9 requirements of this section and ss. 16.71 to 16.77.

10 **SECTION 4.** 16.705 (8) of the statutes is renumbered 16.705 (8) (intro.) and  
11 amended to read:

12 16.705 **(8)** (intro.) The department shall, annually on or before October 15,  
13 submit to the governor, the joint committee on finance, the joint legislative audit  
14 committee and the chief clerk of each house of the legislature for distribution to the  
15 appropriate standing committees under s. 13.172 (3), a report concerning the  
16 number, value and nature of contractual service procurements authorized for each  
17 agency during the preceding fiscal year. The report shall also include, with respect  
18 to contractual service procurements by agencies for the preceding fiscal year:

19 **SECTION 5.** 16.705 (8) (a) and (b) of the statutes are created to read:

20 16.705 **(8)** (a) A summary of the cost–benefit analyses completed by agencies  
21 in compliance with rules promulgated by the department under sub. (2).

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

25 **SECTION 6. Nonstatutory provisions.**

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

7           (2) EMERGENCY RULES ON CONTRACTUAL SERVICE PROCUREMENT. Using the  
8 procedure under section 227.24 of the statutes, the Department of Administration  
9 shall, no later than the first day of the 6th month beginning after the effective date  
10 of this subsection, promulgate the rules required under section 16.705 of the  
11 statutes, as affected by this act, as emergency rules, which shall be in effect for the  
12 period before the effective date of the permanent rules promulgated under section  
13 16.705 of the statutes, as affected by this act. Notwithstanding section 227.24 (1) (a)  
14 and (3) of the statutes, the department is not required to provide evidence that  
15 promulgating a rule under this subsection as an emergency rule is necessary for the  
16 preservation of the public peace, health, safety, or welfare and is not required to  
17 provide a finding of emergency for a rule promulgated under this subsection.

**SECTION 7. Initial applicability.**

18           (1) The treatment of section 13.093 (2) (a) of the statutes first applies with  
19 respect to fiscal estimates ordered on the first day of the 6th month beginning after  
20 publication.  
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22           (2) The treatment of section 16.705 (2) of the statutes first applies with respect  
23 to solicitations for contractual services issued on the effective date of emergency  
24 rules promulgated under SECTION 6 (2).

