

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 105**

April 8, 2005 – Offered by Senator COWLES.

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

Analysis by the Legislative Reference Bureau

Currently, with certain exceptions, 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 substitute amendment 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 substitute amendment provides that these rules must include a requirement for the 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. Under the substitute amendment, the cost–benefit analysis consists of a comparison of the total costs, 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. The substitute amendment also requires the Department of Transportation (DOT) to conduct similar cost–benefit analyses of its proposed specialized services contracts involving an estimated expenditure of more than \$25,000 and to perform similar periodic reviews of such contracts. (Currently, DOT’s specialized services contracts are not subject to general laws governing state contractual services contracts.)

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 substitute amendment 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 substitute amendment 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.

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

1 estimate of the anticipated change in appropriation authority or state or general
2 local government fiscal liability or revenues under the bill, including to the extent
3 possible a projection of such changes in future biennia. The estimate shall also
4 indicate whether any increased costs incurred by the state under the bill can be
5 mitigated though the use of contractual service contracts let in accordance with
6 competitive procedures. For purposes of this paragraph, a bill increasing or
7 decreasing the liability or revenues of the unemployment reserve fund is considered
8 to increase or decrease state fiscal liability or revenues. Except as otherwise
9 provided by joint rules of the legislature or this paragraph, such estimates shall be
10 made by the department or agency administering the appropriation or fund or
11 collecting the revenue. The joint survey committee on retirement systems shall
12 prepare the fiscal estimate with respect to the provisions of any bill referred to it
13 which create or modify any system for, or make any provision for, the retirement of
14 or payment of pensions to public officers or employees. The director of state courts
15 shall prepare the fiscal estimate with respect to the provisions of any bill that
16 modifies an existing surcharge or creates a new surcharge that is imposed under ch.
17 814. When a fiscal estimate is prepared after the bill has been introduced, it shall
18 be printed and distributed as are amendments.

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

20 16.70 (3g) “Cost–benefit analysis” means a comprehensive study to identify
21 and compare the total cost, quality, technical expertise, and timeliness of a service
22 performed by state employees and resources with the total cost, quality, technical
23 expertise, and timeliness of the same service obtained by means of a contract for
24 contractual services.

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

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

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

6 16.705 (2) The department shall promulgate rules for the procurement of
7 contractual services by the department and its designated agents, including but not
8 limited to the rules prescribing approval and monitoring processes for contractual
9 service contracts, a requirement for agencies to conduct a uniform cost-benefit
10 analysis of each proposed contractual service procurement involving an estimated
11 expenditure of more than \$25,000 in accordance with standards prescribed in the
12 rules, and a requirement for agencies to review periodically, and before any renewal,
13 the continued appropriateness of contracting under each contractual services
14 agreement involving an estimated expenditure of more than \$25,000. Each officer
15 requesting approval to engage any person to perform contractual services shall
16 submit to the department written justification for such contracting which shall
17 include a description of the contractual services to be procured, justification of need,
18 justification for not contracting with other agencies, a specific description of the
19 scope of contractual services to be performed, and justification for the procurement
20 process if a process other than competitive bidding is to be used. The department
21 may not approve any contract for contractual services unless it is satisfied that the
22 justification for contracting conforms to the requirements of this section and ss. 16.71
23 to 16.77.

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

1 16.705 **(8)** (intro.) The department shall, annually on or before October 15,
2 submit to the governor, the joint committee on finance, the joint legislative audit
3 committee and the chief clerk of each house of the legislature for distribution to the
4 appropriate standing committees under s. 13.172 (3), a report concerning the
5 number, value and nature of contractual service procurements authorized for each
6 agency during the preceding fiscal year. The report shall also include, with respect
7 to contractual service procurements by agencies for the preceding fiscal year:

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

9 16.705 **(8)** (a) A summary of the cost–benefit analyses completed by agencies
10 in compliance with rules promulgated by the department under sub. (2).

11 (b) Recommendations for elimination of unneeded contractual service
12 procurements and for consolidation or resolicitation of existing contractual service
13 procurements.

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

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

1 appropriateness of contracting pursuant to each engagement under this subsection
2 that involves an estimated expenditure of more than \$25,000.

3 **SECTION 8. Nonstatutory provisions.**

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

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

23 **SECTION 9. Initial applicability.**

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

4 (2) The treatment of sections 16.705 (2) and 84.01 (13) of the statutes first
5 applies with respect to solicitations for contractual services issued on the effective
6 date of emergency rules promulgated under SECTION 8 (2).

7 (3) The renumbering and amendment of section 16.705 (8) of the statutes and
8 the creation of section 16.705 (8) (a) and (b) of the statutes first apply with respect
9 to the report that is due for submittal on October 15, 2006.

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(END)