



2007 DRAFTING REQUEST

Bill

Received: 10/03/2006

Received By: jkuesel

Wanted: As time permits

Identical to LRB:

For: Administration-Budget 7-0370

By/Representing: Wavrunek

This file may be shown to any legislator: NO

Drafter: chanaman

May Contact:

Addl. Drafters: mshovers

Subject: State Govt - procurement
State Finance - miscellaneous
Local Gov't - misc
Courts - miscellaneous

Extra Copies: RPN - 1
RAC - 1

Submit via email: YES

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

DOA:.....Wavrunek, BB0086 -

Topic:

Penalty for contractors who submit false claims; qui tam suits authorized

Instructions:

Per 05-4654/2, with permission of Mark Rinehart, DOJ (p/c, 10/3/06).

Drafting History:

Table with 8 columns: Vers., Drafted, Reviewed, Typed, Proofed, Submitted, Jacketed, Required. It contains two rows of drafting history data.

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P2	chanaman 02/05/2007	wjackson 02/05/2007	nmatzke 01/28/2007	_____	cduerst 01/28/2007		S&L
/P3			jfrantze 02/06/2007	_____	sbasford 02/06/2007		

FE Sent For:

<END>

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Handwritten signatures and dates: 10/2/06, 10/16/06, 10/2/06

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/P2		/p3 w/ 2/5	nmatzke 01/28/2007	_____	cduerst 01/28/2007		

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/?	chanaman 10/11/2006 mshovers 10/13/2006	wjackson 10/25/2006		_____			S&L
/P1			rschluet 10/26/2006	_____	sbasford 10/26/2006		
			<i>/p2/m/c/28</i> nwn 1/28		nwn/cmh 1/28		

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1/?	chanaman	1/pt Wlj 10/25					
1/A	10/4/06		10/26/06				

FE Sent For:

<END>

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: State False Claims Act
- Tracking Code: BB0086
- SBO team: General Government and Justice
- SBO analyst: Leah Wavrunek
 - Phone: 267-0370
 - Email: leah.wavrunek@wisconsin.gov
- Agency acronym: DOJ
- Agency number: 455
- Priority (Low, Medium, High): Low

JTK

The request intends to make changes to the state's false claims act.

The agency offered the following modification:
A redraft of LRB-4654/2 for budget submission.

0444/PI

LRB-4654/2

JLK&MES:wjj:rae
stays

DoA - Wavumek BR0086 ✓

CMH: MES

2005 BILL

LPS: Please
proof amended
stats. w/ Folio.
(Not the inserts-)

Thursday
if
possible.

don't gen cat

1 AN ACT *to amend* 23.41 (5), 25.18 (1) (a), 25.18 (1) (f), 25.18 (1) (m), 84.01 (13),
2 84.06 (2) (a), 84.06 (3), 84.06 (4), 85.015, 102.81 (2), 165.08, 221.0903 (4) (b),
3 655.27 (2), 801.02 (1), 803.09 (1) and (2), 804.01 (2) (intro.) and 805.04 (1); and
4 *to create* 16.771, 16.871, 20.931, 66.0902, 165.25 (11), 805.04 (2m) and 893.981
5 of the statutes; **relating to:** false claims submitted to the state and local
6 governments and providing penalties.

Analysis by the Legislative Reference Bureau

Currently, if a contractor or vendor does business with this state or a local government in this state, the terms of the contract or order govern the performance of, and the price to be paid to, the contractor or vendor. If the contractor or vendor claims payment for materials, supplies, equipment, or contractual services that are not provided in accordance with the contract or order, or at a price that is different from the price specified in the contract or order, the state or a local government has a remedy against the contractor or vendor for breach of contract. If the contractor or vendor is asked to swear to the truth of a claim for payment and the claim is false, the contractor or vendor may also be prosecuted for false swearing, which is a criminal offense. Currently, there is no means generally available for a private person to recover, on behalf of the state, damages sustained by the state as a result of a fraud committed against the state.

This bill provides that whoever knowingly presents or causes to be presented a false claim under any contract or order for materials, supplies, equipment, or

head
STATE GOVERNMENT
OTHER STATE GOVERNMENT
Subhead

BILL

contractual services to be provided to a state agency is subject to a forfeiture (civil penalty) of not less than \$5,000 nor more than \$10,000, plus three times the amount of the damages that were sustained by the state or would have been sustained by the state, whichever is greater, as a result of the false claim. The bill permits the attorney general to bring an action on behalf of the state to recover any forfeiture for which a contractor or vendor is liable as a result of a false claim submitted to a state agency. This bill also contains similar provisions that apply to local governmental units.

The bill also creates new, separate prohibitions against state contractors, grantees, vendors, and other recipients of state resources who knowingly commit certain specified fraudulent acts against the state. The bill makes these persons liable for treble the amount of damages sustained by the state resulting from such acts and imposes additional forfeitures (civil monetary penalties) of not less than \$5,000 nor more than \$10,000 for each violation. The bill also permits a private person, with prior notice to the attorney general, to bring an action on behalf of the state against persons who violate these prohibitions under certain circumstances, and to receive a portion of the proceeds of the action or any settlement thereof. The bill permits the attorney general to elect to pursue an alternate remedy against an alleged offender, such as an administrative remedy, in lieu of an action in court. With certain exceptions, the bill provides that a person who brings an action on behalf of the state is entitled to receive his or her reasonable expenses of bringing the action, including his or her costs and reasonable, actual attorney fees, which are assessed against the defendant.

The bill entitles an employee who is discharged or otherwise discriminated against by an employer as a result of lawful actions taken by the employee to further the investigation of any act of fraud, as defined in the bill, committed by the employer against the state to all necessary relief to make the employee whole. Under the bill, the relief may include reinstatement and double back pay with interest from the time of any discharge to the time of reinstatement. The bill also permits such an employee to recover any costs, including reasonable, actual attorney fees, from his or her employer.

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

Handwritten notes: "Head" in a circle with an arrow pointing to "LOCAL GOVERNMENT" written in a box.

Handwritten note: "INS AND" with a checkmark.

Handwritten mark: a checkmark.

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

- 1 **SECTION 1.** 16.771 of the statutes is created to read:
- 2 **16.771 False claims.** Whoever knowingly presents or causes to be presented
- 3 a false claim for payment under any contract or order for materials, supplies,
- 4 equipment, or contractual services to be provided to an agency shall forfeit not less

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1 than \$5,000 nor more than \$10,000, plus 3 times the amount of the damages that
2 were sustained by the state or would have been sustained by the state, whichever is
3 greater, as a result of the false claim. The attorney general may bring an action on
4 behalf of the state to recover any forfeiture incurred under this section.

5 **SECTION 2.** 16.871 of the statutes is created to read:

6 **16.871 False claims. (1)** In this section:

7 (a) "Agency" has the meaning given in s. 16.70 (1e).

8 (b) "Construction work" has the meaning given in s. 16.87 (1) (a).

9 (c) "Limited trades work" has the meaning given in s. 16.70 (7).

10 **(2)** Whoever knowingly presents or causes to be presented a false claim under
11 any contract for construction work or limited trades work, or for engineering or
12 architectural services, to be provided to any agency shall forfeit not less than \$5,000
13 nor more than \$10,000, plus 3 times the amount of the damages that were sustained
14 by the state or would have been sustained by the state, whichever is greater, as a
15 result of the false claim. The attorney general may bring an action on behalf of the
16 state to recover any forfeiture incurred under this subsection.

17 **SECTION 3.** 20.931 of the statutes is created to read:

18 **20.931 False claims; actions by or on behalf of state. (1)** In this section:

19 (a) "Authority" has the meaning given in s. 16.70 (2).

20 (b) "Claim" includes any request or demand for money, property, or services
21 made to any officer, employee, or agent of this state, or to any contractor, grantee, or
22 other recipient, whether or not under contract, if any portion of the money, property,
23 or services that are requested or demanded is derived from state resources, or if the
24 state is obligated to reimburse the contractor, grantee, or other recipient for any
25 portion of the money, property, or services that are requested or demanded.

BILL

SECTION 3

1 (c) "Employer" includes all agencies and authorities.

2 (d) "Knowingly" means, with respect to information, having actual knowledge
3 of the information, acting in deliberate ignorance of the truth or falsity of the
4 information, or acting in reckless disregard of the truth or falsity of the information.
5 ~~The term~~ ^{knowingly} does not mean specifically intending to defraud.

6 (e) "Proceeds" includes damages, civil penalties, surcharges, payments for costs
7 of compliance and any other economic benefit realized by this state as a result of an
8 action or settlement of a claim.

9 (f) "State public official" has the meaning given in s. 19.42 (14).

10 (2) Except as provided in subs. (3) and (4), ^{STET} any person who does any of the ^{STET}
11 ^{STET} following is liable to this state for 3 times the amount of the damages sustained by
12 this state because of the actions of the person, and in addition shall forfeit not less
13 than \$5,000 nor more than \$10,000 for each violation. ^{STET} *If the person does any of the following*

14 (a) Knowingly presents or causes to be presented to any officer, employee, or
15 agent of this state, or to any contractor, grantee, or other recipient of state resources,
16 a false claim for payment or approval.

17 (b) Knowingly makes, uses, or causes to be made or used ^g a false record or
18 statement to obtain approval or payment of a false claim.

19 (c) Conspires to defraud this state by obtaining allowance or payment of a false
20 claim, or by knowingly making or using, or causing to be made or used, a false record
21 or statement to conceal, avoid, or decrease an obligation to pay or transmit money
22 or property to this state.

23 (d) Has possession, custody, or control of property used or to be used by this
24 state and knowingly delivers or causes to be delivered less property than the amount
25 for which the person receives a certificate or receipt.

BILL

1 (e) Being authorized to make or deliver a document certifying receipt of
2 property that is used or to be used by this state, knowingly makes or delivers a receipt
3 that falsely represents the property that is used or to be used.

4 (f) Knowingly buys or receives as a pledge for payment of an obligation or debt
5 for this state property from any person who lawfully may not sell or pledge the
6 property.

7 (g) Knowingly makes, uses, or causes to be made or used a false record or
8 statement to conceal, avoid, or decrease any obligation to pay or transmit money or
9 property to this state.

10 (h) Is a beneficiary of the submission of a false claim to any officer, employee,
11 or agent of this state, or to any contractor, grantee, or other recipient of state
12 resources, knows that the claim is false, and fails to disclose the false claim to this
13 state within a reasonable time after the person becomes aware that the claim is false.

14 **(3)** The court may assess against a person who violates sub. (2) not less than
15 2 nor more than 3 times the amount of the damages sustained by the state because
16 of the acts of the person, and shall not assess any forfeiture, if the court finds all of
17 the following:

18 (a) The person who commits the acts furnished the attorney general with all
19 information known to the person about the acts within 30 days after the date on
20 which the person obtained the information.

21 (b) The person fully cooperated with any investigation of the acts by this state.

22 (c) At the time that the person furnished the attorney general with information
23 concerning the acts, no criminal prosecution or civil or administrative enforcement
24 action had been commenced with respect to any such act, and the person did not have
25 actual knowledge of the existence of any investigation into any such act.

BILL**SECTION 3**

1 (4) Subsections (1) to (3) do not apply to any claim, record, statement, or return
2 made under chs. 70 to 79.

3 (5) (a) Except as provided in subs. (10) and (12),[✓] any person may bring a civil
4 action as a qui tam plaintiff against a person who commits an act in violation of sub.
5 (2) for the person and the state in the name of the state.

6 (b) The plaintiff shall serve upon the attorney general a copy of the complaint
7 and documents disclosing substantially all material evidence and information that
8 the person possesses. The plaintiff shall file a copy of the complaint with the court
9 for inspection in camera. Except as provided in par. (c), the complaint shall remain
10 under seal for a period of 60 days from the date of filing, and shall not be served upon
11 the defendant until the court so orders. Within 60 days from the date of service upon
12 the attorney general of the complaint, evidence, and information under this
13 paragraph, the attorney general may ~~elect to~~^g intervene in the action.

14 (c) The attorney general may, for good cause shown, move the court for one or
15 more extensions of the period during which a complaint in an action under this
16 subsection remains under seal.

17 (d) Before the expiration of the period during which the complaint remains
18 under seal, the attorney general shall do one of the following:

19 1. Proceed with the action or an alternate remedy under sub. (10),[✓] in which case
20 the action or proceeding under sub. (10)[✓] shall be prosecuted by the state.

21 2. Notify the court that he or she declines to proceed with the action, in which
22 case the person bringing the action may proceed with the action.

23 (e) If a person brings a valid action under this subsection, no person other than
24 the state may intervene or bring a related action while the original action is pending
25 based upon the same facts underlying the pending action.

BILL

1 (f) In any action or other proceeding under sub. (10) brought under this
2 subsection, the plaintiff is required to prove all essential elements of the cause of
3 action or complaint, including damages, by a preponderance of the evidence.

4 (6) If the state proceeds with an action under sub. (5) or an alternate remedy
5 under sub. (10), the state has primary responsibility for prosecuting the action or
6 proceeding under sub. (10). The state is not bound by any act of the person bringing
7 the action, but that person has the right to continue as a party to the action, subject
8 to the limitations under sub. (7).

9 (7) (a) The state may move to dismiss an action under sub. (5) or an
10 administrative proceeding under sub. (10) to which the state is a party for good cause
11 shown, notwithstanding objection of the person bringing the action, if that person is
12 served with a copy of the state's motion and is provided with an opportunity to oppose
13 the motion before the court or the administrative agency before which the proceeding
14 is conducted.

15 (b) With the approval of the governor, the attorney general may compromise
16 and settle an action under sub. (5) or an administrative proceeding under sub. (10)
17 to which the state is a party, notwithstanding objection of the person bringing the
18 action, if the court determines, after affording to the person bringing the action the
19 right to a hearing at which the person is afforded the opportunity to present evidence
20 in opposition to the proposed settlement, that the proposed settlement is fair,
21 adequate, and reasonable considering the relevant circumstances pertaining to the
22 violation.

23 (c) Upon a showing by the state that unrestricted participation in the
24 prosecution of an action under sub. (5) or an alternate proceeding to which the state
25 is a party by the person bringing the action would interfere with or unduly delay the

BILL

1 prosecution of the action or proceeding, or would result in consideration of
2 repetitious or irrelevant evidence or evidence presented for purposes of harassment,
3 the court may limit the person's participation in the prosecution, such as:

- 4 1. Limiting the number of witnesses that the person may call.
- 5 2. Limiting the length of the testimony of the witnesses.
- 6 3. Limiting the cross-examination of witnesses by the person.
- 7 4. Otherwise limiting the participation by the person in the prosecution of the
8 action or proceeding.

9 (d) Upon showing by a defendant that unrestricted participation in the
10 prosecution of an action under sub. (5) or alternate proceeding under sub. (10) to
11 which the state is a party by the person bringing the action would result in
12 harassment or would cause the defendant undue burden or unnecessary expense, the
13 court may limit the person's participation in the prosecution.

14 (8) Except as provided in sub. (7), if the state elects not to participate in an
15 action filed under sub. (5), the person bringing the action may prosecute the action.
16 If the attorney general so requests, the attorney general shall, at the state's expense,
17 be served with copies of all pleadings and deposition transcripts in the action. If the
18 person bringing the action initiates prosecution of the action, the court, without
19 limiting the status and rights of that person, may permit the state to intervene at a
20 later date upon showing by the state of good cause for the proposed intervention.

21 (9) Whether or not the state participates in an action under sub. (5), upon
22 showing in camera by the attorney general that discovery by the person bringing the
23 action would interfere with the state's ongoing investigation or prosecution of a
24 criminal or civil matter arising out of the same facts as the facts upon which the
25 action is based, the court may stay such discovery in whole or in part for a period of

BILL

1 not more than 60 days. The court may extend the period of any such stay upon
2 further showing in camera by the attorney general that the state has pursued the
3 criminal or civil investigation of the matter with reasonable diligence and the
4 proposed discovery in the action brought under sub. (5) will interfere with the
5 ongoing criminal or civil investigation or prosecution.

6 (10) The attorney general may elect to pursue a claim relating to an alleged
7 violation of sub. (2) through an alternate remedy available to the state or any state
8 agency, including an administrative proceeding to assess a civil forfeiture. If the
9 attorney general elects any such alternate remedy, the attorney general shall serve
10 timely notice of his or her election upon the person bringing the action under sub. (5),
11 and that person has the same rights in the alternate venue as the person would have
12 had if the action had continued under sub. (5). Any finding of fact or conclusion of
13 law made by a court or by a state agency in the alternate venue that has become final
14 is conclusive upon all parties named in an action under sub. (5). For purposes of this
15 subsection, a finding or conclusion is final if it has been finally determined on appeal,
16 if all time for filing an appeal or petition for review with respect to the finding or
17 conclusion has expired, or if the finding or conclusion is not subject to judicial review.

18 (11) (a) Except as provided in pars. (b) and (e), if the state proceeds with an
19 action brought by a person under sub. (5) or the state elects to pursue an alternate
20 remedy relating to the same acts under sub. (10), the person who brings the action
21 shall receive at least 15 percent but not more than 25 percent of the proceeds of the
22 action or settlement of the claim, depending upon the extent to which the person
23 contributed to the prosecution of the action or claim.

24 (b) Except as provided in par. (e), if an action or claim is one in which the court
25 or other adjudicator finds to be based primarily upon disclosures of specific

BILL**SECTION 3**

1 information not provided by the person who brings an action under sub. (5) relating
2 to allegations or transactions specifically in a criminal, civil, or administrative
3 hearing, or in a legislative or administrative report, hearing, audit, or investigation,
4 or report made by the news media, the court or other adjudicator may award such
5 amount as it considers appropriate, but not more than 10 percent of the proceeds of
6 the action or settlement of the claim, depending upon the significance of the
7 information and the role of the person bringing the action in advancing the
8 prosecution of the action or claim.

9 (c) Except as provided in par. (e), in addition to any amount received under par.
10 (a) or (b), a person bringing an action under sub. (5) shall be awarded his or her
11 reasonable expenses necessarily incurred in bringing the action together with the
12 person's costs and reasonable actual attorney fees. The court or other adjudicator
13 shall assess any award under this paragraph against the defendant.

14 (d) Except as provided in par. (e), if the state does not proceed with an action
15 or an alternate proceeding under sub. (10), the person bringing the action shall
16 receive an amount that the court decides is reasonable for collection of the civil
17 penalty and damages. The amount shall be not less than 25 percent and not more
18 than 30 percent of the proceeds of the action and shall be paid from the proceeds. In
19 addition, the person shall be paid his or her expenses, costs, and fees under par. (c).[✓]

20 (e) Whether or not the state proceeds with the action or an alternate proceeding
21 under sub. (10), if the court or other adjudicator finds that an action under sub. (5)
22 was brought by a person who planned or initiated the violation upon which the action
23 or proceeding is based, then the court may, to the extent that the court considers
24 appropriate, reduce the share of the proceeds of the action that the person would
25 otherwise receive under par. (a), (b), or (d), taking into account the role of that person

BILL

1 in advancing the prosecution of the action or claim and any other relevant
2 circumstance pertaining to the violation, except that if the person bringing the action
3 is convicted of criminal conduct arising from his or her role in a violation of sub. (2),
4 the court or other adjudicator shall dismiss the person as a party and the person shall
5 not receive any share of the proceeds of the action or claim or any expenses, costs, and
6 fees under par. (c).[✓]

7 (f) If the state does not proceed with an action or claim filed under this section
8 and the person bringing the action prosecutes the action, the court may award to the
9 defendant his or her reasonable actual attorney fees and reasonable expenses
10 incurred in defending the action to the extent permitted under s. 802.05 (3) if the
11 court finds under s. 802.05 (2) that the claim of the person bringing the action was
12 clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment,
13 or that, for other cause under s. 802.05 (2), an award of attorney fees and costs is
14 justified. ^{INSERT 11-15 ✓}

15 (12) (a) No court has jurisdiction over an action brought by a private person
16 under sub. (5) against a state public official if the action is based upon information
17 known to the attorney general at the time that the action is brought.

18 (b) No person may bring an action under sub. (5) that is based upon allegations
19 or transactions that are the subject of a civil action or an administrative proceeding
20 to assess a civil forfeiture in which the state is a party if that action or proceeding
21 was commenced prior to the date that the action is filed.

22 (13) The state is not liable for any expenses incurred by a private person in
23 bringing an action under sub. (5).

24 (14) Any employee who is discharged, demoted, suspended, threatened,
25 harassed, or in any other manner discriminated against by his or her employer

BILL

SECTION 3

1 because of lawful actions taken by the employee, on behalf of the employee, or by
 2 others in furtherance of an action or claim filed under this section, including
 3 investigation for, initiation of, testimony for, or assistance in an action or claim filed
 4 or to be filed under sub. (5) is entitled to all necessary relief to make the employee
 5 whole. Such relief shall in each case include reinstatement with the same seniority
 6 status that the employee would have had but for the discrimination, 2 times the
 7 amount of back pay, interest on the back pay at the legal rate, and compensation for
 8 any special damages sustained as a result of the discrimination, including costs and
 9 reasonable actual attorney fees. An employee may bring an action to obtain the relief
 10 to which the employee is entitled under this subsection.

11 (15) A civil action may be brought based upon acts occurring prior to the
 12 effective date of this subsection [revisor inserts date], if the action is brought
 13 within the period specified in s. 893.981. ✓

INS 12-14 ✓

14 (16) A judgment of guilty entered against a defendant in a criminal action in
 15 which the defendant is charged with fraud or making false statements estops the
 16 defendant from denying the essential elements of the offense in any action under sub.
 17 (5) that involves the same elements as in the criminal action.

18 (17) The remedies provided for under this section are in addition to any other
 19 remedies provided for under any other law or available under the common law.

20 (18) This section shall be liberally construed and applied to promote the public
 21 interest and to effect the congressional intent in enacting 31 USC 3279 to 3733, as
 22 reflected in the act and the legislative history thereof. *of the act*

23 SECTION 4. 23.41 (5) of the statutes is amended to read:

24 23.41 (5) Each contract for construction work entered into by the department
 25 under this section shall be awarded on the basis of bids or competitive sealed

INSERT 12-23

BILL

1 proposals in accordance with procedures established by the department. Each
 2 contract for construction work shall be awarded to the lowest responsible bidder or
 3 the person submitting the most advantageous competitive sealed proposal as
 4 determined by the department. If the bid of the lowest responsible bidder or the
 5 proposal of the person submitting the most advantageous competitive sealed
 6 proposal is determined by the department to be in excess of the estimated reasonable
 7 value of the work or not in the public interest, the department may reject all bids or
 8 competitive sealed proposals. Every such contract is exempted from ss. 16.70 to
 9 16.75, 16.755, 16.76, 16.767 to 16.77, 16.78 to 16.82, 16.855, 16.87, and 16.89, but ss.
 10 16.528, 16.754 and, 16.765, 16.771, and 16.871 apply to the contract. Every such
 11 contract involving an expenditure of more than \$60,000 is not valid until the contract
 12 is approved by the governor.

Keep

15 → SECTION 5. 25.18 (1) (a) of the statutes is amended to read:

14 25.18 (1) (a) Notwithstanding s. 20.930 and all provisions of subch. IV of ch.
 15 16 and s. 20.930, except s. 16.771, employ special legal or investment counsel in any
 16 matters arising out of the scope of its investment authority. The employment of
 17 special legal counsel shall be with the advice and consent of the attorney general
 18 whenever such special counsel is to be compensated by the board. Any expense of
 19 counsel so employed shall be borne by the fund for which the services shall be
 20 furnished.

INSERT
13-13

Keep

21 → SECTION 6. 25.18 (1) (f) of the statutes is amended to read:

22 25.18 (1) (f) Maintain and repair any building or other structure or premises
 23 which it owns in fee or in which it owns the beneficial interest and, notwithstanding
 24 all provisions of subch. IV or V of ch. 16, except ss. 16.771 and 16.871, it shall have
 25 exclusive authority to make such agreements and enter into such contracts as it

INSERT
13-21

BILL

SECTION 6

1 deems necessary for such purpose. All noncapital costs under this paragraph shall
 2 be charged to the current income accounts of the funds having an interest in the
 3 building, structure or premises.

Keep 4 → **SECTION 7.** 25.18 (1) (m) of the statutes is amended to read:

5 25.18 (1) (m) Notwithstanding all provisions of subchs. IV and V of ch. 16,
 6 except ss. 16.771 and 16.871, employ professionals, contractors or other agents
 7 necessary to evaluate or operate any property if a fund managed by the board has
 8 an interest in, or is considering purchasing or lending money based upon the value
 9 of, that property. Costs under this paragraph shall be paid by the fund and charged
 10 to the appropriate account under s. 40.04 (3).

INSERT
14-47

11 **SECTION 8.** 66.0902 of the statutes is created to read:

12 **66.0902 False claims. (1) DEFINITIONS.** In this section:

13 (a) "Local governmental unit" has the meaning given in s. 66.0131 (1) (a).

14 (b) "Public contract" means a contract for the construction, execution, repair,
 15 remodeling, or improvement of a public work or building or for the furnishing of
 16 supplies, equipment, material, or professional or contractual services of any kind.

17 **(2) PRESENTATION OF FALSE CLAIMS.** Whoever knowingly presents or causes to
 18 be presented a false claim for payment under any public contract with a local
 19 governmental unit shall forfeit not less than \$5,000 nor more than \$10,000, plus 3
 20 times the amount of the damages that were sustained by the local governmental unit
 21 or would have been sustained by the local governmental unit, whichever is greater,
 22 as a result of the false claim.

23 ~~**SECTION 9.** 84.01 (13) of the statutes, as affected by 2005 Wisconsin Act 89, is~~
 24 ~~amended to read:~~

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1 **84.01 (13) ENGINEERING SERVICES.** The department may engage such
2 engineering, consulting, surveying, or other specialized services as it deems
3 advisable. Any engagement of services under this subsection is exempt from ss.
4 16.70 to 16.75, 16.755 to 16.77, 16.78 to 16.82 and, 16.85 to 16.87, and 16.875 to 16.89,
5 but ss. 16.528, 16.752 and, 16.754, 16.771, and 16.871 apply to such engagement.
6 Any engagement involving an expenditure of \$3,000 or more shall be by formal
7 contract approved by the governor. The department shall conduct a uniform
8 cost-benefit analysis, as defined in s. 16.70 (3g), of each proposed engagement under
9 this subsection that involves an estimated expenditure of more than \$25,000 in
10 accordance with standards prescribed by rule of the department. The department
11 shall review periodically, and before any renewal, the continued appropriateness of
12 contracting pursuant to each engagement under this subsection that involves an
13 estimated expenditure of more than \$25,000.

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

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

BILL**SECTION 10**

1 contract is exempted from ss. 16.70 to 16.75, 16.755 to ~~16.77, 16.78 to~~ 16.82, 16.87
2 and 16.89, but ss. 16.528, 16.752 and, 16.754, ~~16.771, and 16.871~~ apply to the
3 contract. Any such contract involving an expenditure of \$1,000 or more shall not be
4 valid until approved by the governor. The secretary may require the attorney general
5 to examine any contract and any bond submitted in connection with the contract and
6 report on its sufficiency of form and execution. The bond required by s. 779.14 (1m)
7 is exempt from approval by the governor and shall be subject to approval by the
8 secretary. This subsection also applies to contracts with private contractors based
9 on bids for maintenance under s. 84.07.

10 **SECTION 11.** 84.06 (3) of the statutes is amended to read:

11 **84.06 (3)** CONTRACTS WITH COUNTY OR MUNICIPALITY; DIRECT LABOR; MATERIALS. If
12 the department finds that it would be more feasible and advantageous to have the
13 improvement performed by the county in which the proposed improvement is located
14 and without bids, the department may, by arrangement with the county highway
15 committee of the county, enter into a contract satisfactory to the department to have
16 the work done by the county forces and equipment. In such contract the department
17 may authorize the county to purchase, deliver, and store materials and may fix the
18 rental rates of small tools and equipment. The contract shall be between the county
19 and the state and shall not be based on bids, and may be entered into on behalf of the
20 county by the county highway committee and on behalf of the state by the secretary.
21 Such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230,
22 except ~~s.~~ ss. 16.754, 16.771, and 16.871. If the total estimated indebtedness to be
23 incurred exceeds \$5,000 the contract shall not be valid until approved by the
24 governor. The provisions of this subsection relating to agreements between a county
25 and the state shall also authorize and apply to such arrangements between a city,

BILL

1 town, or a village and the state. In such cases, the governing body of the city, town,
2 or village shall enter into the agreement on behalf of the municipality.

3 **SECTION 12.** 84.06 (4) of the statutes is amended to read:

4 **84.06 (4) SPECIAL CONTRACTS WITH RAILROADS AND UTILITIES.** If an improvement
5 undertaken by the department will cross or affect the property or facilities of a
6 railroad or public utility company, the department may, upon finding that it is
7 feasible and advantageous to the state, arrange to perform portions of the
8 improvement work affecting such facilities or property or perform work of altering,
9 rearranging, or relocating such facilities by contract with the railroad or public
10 utility. Such contract shall be between the railroad company or public utility and the
11 state and need not be based on bids. The contract may be entered into on behalf of
12 the state by the secretary. Every such contract is exempted from s. 779.14 and from
13 all provisions of chs. 16 and 230, except ss. 16.528, 16.752 and, 16.754, 16.771, and
14 16.871. No such contract in which the total estimated debt to be incurred exceeds
15 \$5,000 shall be valid until approved by the governor. As used in this subsection,
16 “public utility” means the same as in s. 196.01 (5), and includes a
17 telecommunications carrier as defined in s. 196.01 (8m), and “railroad” means the
18 same as in s. 195.02. “Property” as used in this subsection includes but is not limited
19 to tracks, trestles, signals, grade crossings, rights-of-way, stations, pole lines,
20 plants, substations, and other facilities. Nothing in this subsection shall be
21 construed to relieve any railroad or public utility from any financial obligation,
22 expense, duty, or responsibility otherwise provided by law relative to such property.

23 **SECTION 13.** 85.015 of the statutes is amended to read:

24 **85.015 Transportation assistance contracts.** All contracts entered into
25 under this chapter to provide financial assistance in the areas of railroads, urban

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1 mass transit, specialized transportation, and harbors are subject to ss. 16.528 and,
2 16.752, 16.771, and 16.871 but are exempt from ss. 16.70 to 16.75, 16.755 to 16.77,
3 16.78 to 16.82 and, 16.85 to 16.87, and 16.875 to 16.89.

4 **SECTION 14.** 102.81 (2) of the statutes is amended to read:

5 102.81 (2) The department may retain an insurance carrier or insurance
6 service organization to process, investigate and pay claims under this section and
7 may obtain excess or stop-loss reinsurance with an insurance carrier authorized to
8 do business in this state in an amount that the secretary determines is necessary for
9 the sound operation of the uninsured employers fund. In cases involving disputed
10 claims, the department may retain an attorney to represent the interests of the
11 uninsured employers fund and to make appearances on behalf of the uninsured
12 employers fund in proceedings under ss. 102.16 to 102.29. Section 20.918 and all
13 provisions of subch. IV of ch. 16, except s. 16.771, do not apply to an attorney hired
14 under this subsection. The charges for the services retained under this subsection
15 shall be paid from the appropriation under s. 20.445 (1) (hp). The cost of any
16 reinsurance obtained under this subsection shall be paid from the appropriation
17 under s. 20.445 (1) (sm).

18 **SECTION 15.** 165.08 of the statutes is amended to read:

19 **165.08 Power to compromise.** Any civil action prosecuted by the
20 department by direction of any officer, department, board or commission, shall be
21 compromised or discontinued when so directed by such officer, department, board or
22 commission. Any Except as provided in s. 20.931 (7) (b), any civil action prosecuted
23 by the department on the initiative of the attorney general, or at the request of any
24 individual may be compromised or discontinued with the approval of the governor.

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1 In any criminal action prosecuted by the attorney general, the department shall have
2 the same powers with reference to such action as are vested in district attorneys.

3 **SECTION 16.** 165.25 (11) of the statutes is created to read:

4 165.25 (11) FALSE CLAIMS. Diligently investigate possible violations of s. 20.931,
5 and, if the department determines that a person has committed an act that is
6 punishable under s. 20.931, may bring a civil action against that person.

7 **SECTION 17.** 221.0903 (4) (b) of the statutes is amended to read:

8 221.0903 (4) (b) *Contracts for examination services.* The division may enter
9 into contracts with any bank supervisory agency with concurrent jurisdiction over
10 a state bank or an in-state branch of an out-of-state state bank to engage the
11 services of the agency's examiners at a reasonable rate of compensation, or to provide
12 the services of the division's examiners to the agency at a reasonable rate of
13 compensation. Contracts entered into under this paragraph are exempt from ss.
14 16.70 to 16.76 and, 16.767 to 16.77, and 16.78 to 16.82.

15 **SECTION 18.** 655.27 (2) of the statutes is amended to read:

16 655.27 (2) FUND ADMINISTRATION AND OPERATION. Management of the fund shall
17 be vested with the board of governors. The commissioner shall either provide staff
18 services necessary for the operation of the fund or, with the approval of the board of
19 governors, contract for all or part of these services. Such a contract is subject to s-
20 ss. 16.765 and 16.771, but is otherwise exempt from subch. IV of ch. 16. The
21 commissioner shall adopt rules governing the procedures for creating and
22 implementing these contracts before entering into the contracts. At least annually,
23 the contractor shall report to the commissioner and to the board of governors
24 regarding all expenses incurred and subcontracting arrangements. If the board of
25 governors approves, the contractor may hire legal counsel as needed to provide staff

BILL**SECTION 18**

1 services. The cost of contracting for staff services shall be funded from the
2 appropriation under s. 20.145 (2) (u).

3 **SECTION 19.** 801.02 (1) of the statutes is amended to read:

4 **801.02 (1)** ~~A- Except as provided in s. 20.931 (5) (b),~~ a civil action in which a
5 personal judgment is sought is commenced as to any defendant when a summons and
6 a complaint naming the person as defendant are filed with the court, provided service
7 of an authenticated copy of the summons and of the complaint is made upon the
8 defendant under this chapter within 90 days after filing.

9 **SECTION 20.** 803.09 (1) and (2) of the statutes are amended to read:

10 **803.09 (1)** ~~Upon~~ Except as provided in s. 20.931, upon timely motion anyone
11 shall be permitted to intervene in an action when the movant claims an interest
12 relating to the property or transaction which is the subject of the action and the
13 movant is so situated that the disposition of the action may as a practical matter
14 impair or impede the movant's ability to protect that interest, unless the movant's
15 interest is adequately represented by existing parties.

16 **(2)** ~~Upon~~ Except as provided in s. 20.931, upon timely motion anyone may be
17 permitted to intervene in an action when a movant's claim or defense and the main
18 action have a question of law or fact in common. When a party to an action relies for
19 ground of claim or defense upon any statute or executive order or rule administered
20 by a federal or state governmental officer or agency or upon any regulation, order,
21 rule, requirement or agreement issued or made pursuant to the statute or executive
22 order, the officer or agency upon timely motion may be permitted to intervene in the
23 action. In exercising its discretion the court shall consider whether the intervention
24 will unduly delay or prejudice the adjudication of the rights of the original parties.

25 **SECTION 21.** 804.01 (2) (intro.) of the statutes is amended to read:

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1 804.01 (2) SCOPE OF DISCOVERY. (intro.) ~~Unless~~ Except as provided in s. 20.931
2 (9), and unless otherwise limited by order of the court in accordance with the
3 provisions of this chapter, the scope of discovery is as follows:

4 **SECTION 22.** 805.04 (1) of the statutes is amended to read:

5 805.04 (1) BY PLAINTIFF; BY STIPULATION. ~~An~~ Except as provided in sub. (2m), an
6 action may be dismissed by the plaintiff without order of court by serving and filing
7 a notice of dismissal at any time before service by an adverse party of responsive
8 pleading or motion or by the filing of a stipulation of dismissal signed by all parties
9 who have appeared in the action. Unless otherwise stated in the notice of dismissal
10 or stipulation, the dismissal is not on the merits, except that a notice of dismissal
11 operates as an adjudication on the merits when filed by a plaintiff who has once
12 dismissed in any court an action based on or including the same claim.

13 **SECTION 23.** 805.04 (2m) of the statutes is created to read:

14 805.04 (2m) FALSE CLAIMS. An action filed under s. 20.931 may be dismissed
15 only by order of the court. In determining whether to dismiss the action filed under
16 s. 20.931, the court shall take into account the best interests of the parties and the
17 purposes of s. 20.931.

18 **SECTION 24.** 893.981 of the statutes is created to read:

19 **893.981 False claims.** An action or claim under s. 20.931 shall be commenced
20 within 10 years after the cause of the action or claim accrues or be barred.

21 **SECTION 25/Initial applicability.**

Handwritten notes:
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~~9329~~
Initial Applicability
Medicine
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22 (1) The treatment of sections 16.771, 16.871, 23.41 (5), 25.18 (1) (a), (f), and (m),
23 66.0902, 84.01 (13), 84.06 (2) (a), (3), and (4), 85.015, 102.81 (2), 221.0903 (4) (b), and

Handwritten notes:
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False claims
2

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1 655.27 (2) of the statutes first applies with respect to false claims that are presented
2 or caused to be presented on the effective date of this subsection.

3 (END)

5
6

of the statutes; relating to: false claims submitted to the state and local governments and providing penalties.

INS
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Analysis by the Legislative Reference Bureau

Currently, if a contractor or vendor does business with this state or a local government in this state, the terms of the contract or order govern the performance of, and the price to be paid to, the contractor or vendor. If the contractor or vendor claims payment for materials, supplies, equipment, or contractual services that are not provided in accordance with the contract or order, or at a price that is different from the price specified in the contract or order, the state or a local government has a remedy against the contractor or vendor for breach of contract. If the contractor or vendor is asked to swear to the truth of a claim for payment and the claim is false, the contractor or vendor may also be prosecuted for false swearing, which is a criminal offense. Currently, there is no means generally available for a private person to recover, on behalf of the state, damages sustained by the state as a result of a fraud committed against the state.

This bill ^{also} provides that whoever knowingly presents or causes to be presented a false claim under any contract or order for materials, supplies, equipment, or

2005-2006 Legislature
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LRB 4654/2
JFK&MFS:wjls

local governmental unit
contractual services to be provided to a ~~contractor or vendor~~ is subject to a forfeiture ~~of not less than \$5,000 nor more than \$10,000, plus three times the amount, of the damages that were sustained by the state or would have been sustained by the state, whichever is greater, as a result of the false claim.~~ The bill permits the attorney general to bring an action on behalf of the state to recover any forfeiture for which a contractor or vendor is liable as a result of a false claim submitted to a local governmental unit. This bill also contains similar provisions that apply to local governmental units.

The bill also creates new, separate prohibitions against state contractors, grantees, vendors, and other recipients of state resources who knowingly commit certain specified fraudulent acts against the state. The bill makes these persons liable for treble the amount of damages sustained by the state resulting from such acts and imposes additional forfeitures (civil monetary penalties) of not less than \$5,000 nor more than \$10,000 for each violation. The bill also permits a private person, with prior notice to the attorney general, to bring an action on behalf of the state against persons who violate these prohibitions under certain circumstances, and to receive a portion of the proceeds of the action or any settlement thereof. The bill permits the attorney general to pursue an alternate remedy against an alleged offender, such as an administrative remedy, in lieu of an action in court. With certain exceptions, the bill provides that a person who brings an action on behalf of the state is entitled to receive his or her reasonable expenses of bringing the action, including his or her costs and reasonable, actual attorney fees, which are assessed

INSERT 12-23

23.41 (5)

(5) Each contract for construction work entered into by the department under this section shall be awarded on the basis of bids or competitive sealed proposals in accordance with procedures established by the department. Each contract for construction work shall be awarded to the lowest responsible bidder or the person submitting the most advantageous competitive sealed proposal as determined by the department. If the bid of the lowest responsible bidder or the proposal of the person submitting the most advantageous competitive sealed proposal is determined by the department to be in excess of the estimated reasonable value of the work or not in the public interest, the department may reject all bids or competitive sealed proposals. Every such contract is exempted from ss. 16.70 to 16.75, 16.755, 16.76, 16.767 to 16.77, 16.78 to 16.82, 16.855, 16.87, and 16.89, but ss. 16.528, 16.753, 16.754, and 16.765 apply to the contract. Every such contract involving an expenditure of more than \$60,000 is not valid until the contract is approved by the governor.

16.771, and 16.871

INSERT 13-13

25.18(1)(a)

ss. 16.753 and 16.771

(a) Notwithstanding s. 20.930 and all provisions of subch. IV of ch. 16, except ~~s. 16.753~~, employ special legal or investment counsel in any matters arising out of the scope of its investment authority. Section 16.753 does not apply to the employment of legal or investment counsel for the purpose of assisting the board with investments. The employment of special legal counsel shall be with the advice and consent of the attorney general whenever such special counsel is to be compensated by the board. Any expense of counsel so employed shall be borne by the fund for which the services shall be furnished.

INSERT 13-21

25.18(1)(f)

(f) Maintain and repair any building or other structure or premises which it owns in fee or in which it owns the beneficial interest and, notwithstanding all provisions of subch. IV or V of ch. 16, except ~~s. 16.753~~, it shall have exclusive authority to make such agreements and enter into such contracts as it deems necessary for such purpose. Section 16.753 does not apply to agreements and contracts entered into by the board for the purpose of assisting the board with investments. All noncapital costs under this paragraph shall be charged to the current income accounts of the funds having an interest in the building, structure or premises.

SS.

, 16.771, and
16.871

INSERT 14-4

25.18(1)(m)

(m) Notwithstanding all provisions of subchs. IV and V of ch. 16, except ~~s. 16.753~~^{ss.}, employ professionals, contractors or other agents necessary to evaluate or operate any property if a fund managed by the board has an interest in, or is considering purchasing or lending money based upon the value of, that property. Section ~~16.753~~^{s. 16.771, and 16.871} does not apply to the employment of any person for the purpose of assisting the board with investments. Costs under this paragraph shall be paid by the fund and charged to the appropriate account under s. 40.04 (3).

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0444/?ins
CMH&MES:.....

1 Insert 11-15

 ****NOTE: You may wish to review s. 802.05 to see if that statute is more comprehensive and as sufficient to cover any problems that may arise.

2

3 Insert 11-18

 ****NOTE: Please review this language. No court has jurisdiction over a qui tam action brought by a private person against a state public official if the action is based upon information known to the attorney general at the time the action is brought. ~~is~~ ^{is} this problematic because a qui tam plaintiff may have no way of knowing what information was known to the attorney general. ②-cm
*

4

5 Insert 12-14

 ****NOTE: This section expressly imposes liability, including liability for civil forfeitures, for acts occurring prior to enactment of the bill resulting from this draft. This provision may be considered to be a penal statute. Retroactive operation of penal statutes may raise due process issues which could affect the enforceability of this provision. le

6

7 Insert 18-18

8 **SECTION ~~4~~ 84.01 (13)** of the statutes is amended to read:

9 **84.01 (13) ENGINEERING SERVICES.** The department may engage such
10 engineering, consulting, surveying, or other specialized services as it deems
11 advisable. Any engagement of services under this subsection is exempt from ss.
12 16.70 to 16.75, 16.755 to 16.77, 16.78 to 16.82, and 16.85 to 16.87, and 16.875 to
13 16.89, but ss. 16.528, 16.752, 16.753, and 16.754, 16.771, and 16.871 apply to such
14 engagement. Any engagement involving an expenditure of \$3,000 or more shall be
15 by formal contract approved by the governor. The department shall conduct a
16 uniform cost-benefit analysis, as defined in s. 16.70 (3g), of each proposed
17 engagement under this subsection that involves an estimated expenditure of more
18 than \$25,000 in accordance with standards prescribed by rule of the department. The

1 department shall review periodically, and before any renewal, the continued
2 appropriateness of contracting pursuant to each engagement under this subsection
3 that involves an estimated expenditure of more than \$25,000.

~~NOTE: NOTE: Sub. (13) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c).NOTE:~~

History: 1971 c. 40, 125; 1973 c. 12; 1973 c. 243 s. 82; 1975 c. 189; 1977 c. 29 ss. 918 to 924, 1654 (1), (8) (a), (f), 1656 (43); 1977 c. 190, 272; 1979 c. 221, 314; 1981 c. 346 s. 38; 1983 a. 27, 130; 1985 a. 29, 300; 1987 a. 27; 1989 a. 31, 125, 345; 1993 a. 246; 1995 a. 225, 338; 1997 a. 27, 106; 1999 a. 9; 2001 a. 16; 2005 a. 25, 89, 392, 410; s. 13.93 (2) (c).

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

5 84.06 (2) (a) All such highway improvements shall be executed by contract
6 based on bids unless the department finds that another method as provided in sub.
7 (3) or (4) would be more feasible and advantageous. Bids shall be advertised for in
8 the manner determined by the department. Except as provided in s. 84.075, the
9 contract shall be awarded to the lowest competent and responsible bidder as
10 determined by the department. If the bid of the lowest competent bidder is
11 determined by the department to be in excess of the estimated reasonable value of
12 the work or not in the public interest, all bids may be rejected. The department shall,
13 so far as reasonable, follow uniform methods of advertising for bids and may
14 prescribe and require uniform forms of bids and contracts. Except as provided in par.
15 (b), the secretary shall enter into the contract on behalf of the state. Every such
16 contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.77, 16.78 to 16.82, 16.87
17 and 16.89, but ss. 16.528, 16.752, 16.753, and 16.754, 16.771, and 16.871 apply to the
18 contract. Any such contract involving an expenditure of \$1,000 or more shall not be
19 valid until approved by the governor. The secretary may require the attorney general
20 to examine any contract and any bond submitted in connection with the contract and
21 report on its sufficiency of form and execution. The bond required by s. 779.14 (1m)
22 is exempt from approval by the governor and shall be subject to approval by the

1 secretary. This subsection also applies to contracts with private contractors based
2 on bids for maintenance under s. 84.07.

History: 1971 c. 125; 1977 c. 29 ss. 932, 1654 (8) (a); 1977 c. 196 s. 131; 1977 c. 273; 1979 c. 32 s. 92 (9); 1979 c. 34, 314; 1983 a. 27; 1983 a. 524 ss. 31, 50; 1985 a. 225 s. 100; 1985 a. 300, 332; 1987 a. 98, 399; 1989 a. 31, 345; 1993 a. 496; 1995 a. 27; 1997 a. 237; 2001 a. 16; 2005 a. 410.

3 ~~SECTION 31~~ **SECTION 84.06 (3)** of the statutes is amended to read:

4 **84.06 (3) CONTRACTS WITH COUNTY OR MUNICIPALITY; DIRECT LABOR; MATERIALS.** If
5 the department finds that it would be more feasible and advantageous to have the
6 improvement performed by the county in which the proposed improvement is located
7 and without bids, the department may, by arrangement with the county highway
8 committee of the county, enter into a contract satisfactory to the department to have
9 the work done by the county forces and equipment. In such contract the department
10 may authorize the county to purchase, deliver, and store materials and may fix the
11 rental rates of small tools and equipment. The contract shall be between the county
12 and the state and shall not be based on bids, and may be entered into on behalf of the
13 county by the county highway committee and on behalf of the state by the secretary.
14 Such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230,
15 except ss. 16.753 and, 16.754, 16.771, and 16.871. If the total estimated
16 indebtedness to be incurred exceeds \$5,000 the contract shall not be valid until
17 approved by the governor. The provisions of this subsection relating to agreements
18 between a county and the state shall also authorize and apply to such arrangements
19 between a city, town, or a village and the state. In such cases, the governing body
20 of the city, town, or village shall enter into the agreement on behalf of the
21 municipality.

History: 1971 c. 125; 1977 c. 29 ss. 932, 1654 (8) (a); 1977 c. 196 s. 131; 1977 c. 273; 1979 c. 32 s. 92 (9); 1979 c. 34, 314; 1983 a. 27; 1983 a. 524 ss. 31, 50; 1985 a. 225 s. 100; 1985 a. 300, 332; 1987 a. 98, 399; 1989 a. 31, 345; 1993 a. 496; 1995 a. 27; 1997 a. 237; 2001 a. 16; 2005 a. 410.

22 ~~SECTION 4~~ **SECTION 84.06 (4)** of the statutes is amended to read:

1 84.06 (4) SPECIAL CONTRACTS WITH RAILROADS AND UTILITIES. If an improvement
2 undertaken by the department will cross or affect the property or facilities of a
3 railroad or public utility company, the department may, upon finding that it is
4 feasible and advantageous to the state, arrange to perform portions of the
5 improvement work affecting such facilities or property or perform work of altering,
6 rearranging, or relocating such facilities by contract with the railroad or public
7 utility. Such contract shall be between the railroad company or public utility and the
8 state and need not be based on bids. The contract may be entered into on behalf of
9 the state by the secretary. Every such contract is exempted from s. 779.14 and from
10 all provisions of chs. 16 and 230, except ss. 16.528, 16.752, 16.753, and 16.754,
11 16.771, and 16.871. No such contract in which the total estimated debt to be incurred
12 exceeds \$5,000 shall be valid until approved by the governor. As used in this
13 subsection, "public utility" means the same as in s. 196.01 (5), and includes a
14 telecommunications carrier as defined in s. 196.01 (8m), and "railroad" means the
15 same as in s. 195.02. "Property" as used in this subsection includes but is not limited
16 to tracks, trestles, signals, grade crossings, rights-of-way, stations, pole lines,
17 plants, substations, and other facilities. Nothing in this subsection shall be
18 construed to relieve any railroad or public utility from any financial obligation,
19 expense, duty, or responsibility otherwise provided by law relative to such property.

History: 1971 c. 125; 1977 c. 29 ss. 932, 1654 (8) (a); 1977 c. 196 s. 131; 1977 c. 273; 1979 c. 32 s. 92 (9); 1979 c. 34, 314; 1983 a. 27; 1983 a. 524 ss. 31, 50; 1985 a. 225 s. 100; 1985 a. 300, 332; 1987 a. 98, 399; 1989 a. 31, 345; 1993 a. 496; 1995 a. 27; 1997 a. 237; 2001 a. 16; 2005 a. 410.

20 ~~SECTION 85.015~~ 85.015 of the statutes is amended to read:

21 **85.015 Transportation assistance contracts.** All contracts entered into
22 under this chapter to provide financial assistance in the areas of railroads, urban
23 mass transit, specialized transportation, and harbors are subject to ss. 16.528,

1 16.752, and 16.753, 16.771, and 16.871 but are exempt from ss. 16.70 to 16.75, 16.755
2 to 16.77, 16.78 to 16.82, 16.85 to 16.87, and 16.875 to 16.89.

3 History: 1981 c. 20; 1985 a. 300; 1989 a. 345; 2005 a. 410.

3 ~~SECTION 102.81~~ SECTION 102.81 (2) of the statutes is amended to read:

4 102.81 (2) The department may retain an insurance carrier or insurance
5 service organization to process, investigate and pay claims under this section and
6 may obtain excess or stop-loss reinsurance with an insurance carrier authorized to
7 do business in this state in an amount that the secretary determines is necessary for
8 the sound operation of the uninsured employers fund. In cases involving disputed
9 claims, the department may retain an attorney to represent the interests of the
10 uninsured employers fund and to make appearances on behalf of the uninsured
11 employers fund in proceedings under ss. 102.16 to 102.29. Section 20.930 and all
12 provisions of subch. IV of ch. 16, except ss. 16.753 and 16.771, do not apply to an
13 attorney hired under this subsection. The charges for the services retained under
14 this subsection shall be paid from the appropriation under s. 20.445 (1) (rp). The cost
15 of any reinsurance obtained under this subsection shall be paid from the
16 appropriation under s. 20.445 (1) (sm).

~~NOTE: NOTE: Sub. (2) is shown as affected by 3 acts of the 2005 Wisconsin legislature and as merged by the Revisor under s. 13.93 (2) (c).NOTE:~~

History: 1989 a. 64; 1995 a. 117; 2003 a. 144; 2005 a. 172, 253, 410; s. 13.93 (2) (c).

17
18 Insert 20-3

19 ~~SECTION 221.0903~~ SECTION 221.0903 (4) (b) of the statutes is amended to read:

20 221.0903 (4) (b) *Contracts for examination services.* The division may enter
21 into contracts with any bank supervisory agency with concurrent jurisdiction over
22 a state bank or an in-state branch of an out-of-state state bank to engage the
23 services of the agency's examiners at a reasonable rate of compensation, or to provide
24 the services of the division's examiners to the agency at a reasonable rate of

1 compensation. Contracts entered into under this paragraph are exempt from ss.
2 16.70 to 16.752, 16.754 to 16.76, and 16.767 to 16.77, and 16.78 to 16.82.

3 History: 1997 a. 146; 2005 a. 217, 410.

3 **SECTION ~~5~~ 655.27 (2)** of the statutes is amended to read:

4 **655.27 (2) FUND ADMINISTRATION AND OPERATION.** Management of the fund shall
5 be vested with the board of governors. The commissioner shall either provide staff
6 services necessary for the operation of the fund or, with the approval of the board of
7 governors, contract for all or part of these services. Such a contract is subject to ss.
8 16.753 and, 16.765, and 16.771, but is otherwise exempt from subch. IV of ch. 16. The
9 commissioner shall adopt rules governing the procedures for creating and
10 implementing these contracts before entering into the contracts. At least annually,
11 the contractor shall report to the commissioner and to the board of governors
12 regarding all expenses incurred and subcontracting arrangements. If the board of
13 governors approves, the contractor may hire legal counsel as needed to provide staff
14 services. The cost of contracting for staff services shall be funded from the
15 appropriation under s. 20.145 (2) (u).

History: 1975 c. 37, 79, 199; 1977 c. 29, 131; 1979 c. 34, 194; 1981 c. 20; 1983 a. 27, 158; 1985 a. 340; 1987 a. 27, 186, 247, 399; 1989 a. 102, 187, 332; 1991 a. 214, 315; 1993 a. 473; 1995 a. 10; 2001 a. 65; 2003 a. 111; 2005 a. 36, 410.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0444/P1
CMH&MES:wlj:rs

02
cr
↑
stays

DOA:.....Wavrunek, BB0086 - Penalty for contractors who submit false claims; qui tam suits authorized

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

relating to act

1 AN ACT ...; relating to: false claims submitted to the state and local governments
2 and providing penalties.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

OTHER STATE GOVERNMENT

Currently, if a contractor or vendor does business with this state or a local government in this state, the terms of the contract or order govern the performance of, and the price to be paid to, the contractor or vendor. If the contractor or vendor claims payment for materials, supplies, equipment, or contractual services that are not provided in accordance with the contract or order, or at a price that is different from the price specified in the contract or order, the state or a local government has a remedy against the contractor or vendor for breach of contract. If the contractor or vendor is asked to swear to the truth of a claim for payment and the claim is false, the contractor or vendor may also be prosecuted for false swearing, which is a criminal offense. Currently, there is no means generally available for a private person to recover, on behalf of the state, damages sustained by the state as a result of a fraud committed against the state.

This bill provides that whoever knowingly presents or causes to be presented a false claim under any contract or order for materials, supplies, equipment, or contractual services to be provided to a state agency is subject to a forfeiture (civil

penalty) of not less than \$5,000 nor more than \$10,000, plus three times the amount of the damages that were sustained by the state or would have been sustained by the state, whichever is greater, as a result of the false claim. The bill permits the attorney general to bring an action on behalf of the state to recover any forfeiture for which a contractor or vendor is liable as a result of a false claim submitted to a state agency. This bill also contains similar provisions that apply to local governmental units.

The bill also creates new, separate prohibitions against state contractors, grantees, vendors, and other recipients of state resources who knowingly commit certain specified fraudulent acts against the state. The bill makes these persons liable for treble the amount of damages sustained by the state resulting from such acts and imposes additional forfeitures (civil monetary penalties) of not less than \$5,000 nor more than \$10,000 for each violation. The bill also permits a private person, with prior notice to the attorney general, to bring an action on behalf of the state against persons who violate these prohibitions under certain circumstances, and to receive a portion of the proceeds of the action or any settlement. The bill permits the attorney general to pursue an alternate remedy, such as an administrative remedy, against an alleged offender in lieu of an action in court. With certain exceptions, the bill provides that a person who brings an action on behalf of the state is entitled to receive his or her reasonable expenses of bringing the action, including his or her costs and reasonable, actual attorney fees, which are assessed against the defendant.

The bill entitles an employee who is discharged or otherwise discriminated against by an employer as a result of lawful actions taken by the employee to further the investigation of any act of fraud, as defined in the bill, committed by the employer against the state to all necessary relief to make the employee whole. Under the bill, the relief may include reinstatement and double back pay with interest from the time of any discharge to the time of reinstatement. The bill also permits the employee to recover any costs, including reasonable, actual attorney fees, from his or her employer.

LOCAL GOVERNMENT

This bill also provides that whoever knowingly presents or causes to be presented a false claim under any contract or order for materials, supplies, equipment, or contractual services to be provided to a local governmental unit is subject to a forfeiture of not less than \$5,000 nor more than \$10,000, plus three times the amount of the damages that were sustained by the local governmental unit or would have been sustained by the local governmental unit, whichever is greater, as a result of the false claim. The bill permits the attorney general to bring an action on behalf of the local governmental unit to recover any forfeiture for which a contractor or vendor is liable as a result of a false claim submitted to a local governmental unit.

For further information see the *state and local* 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.** 16.771 of the statutes is created to read:

2 **16.771 False claims.** Whoever knowingly presents or causes to be presented
3 a false claim for payment under any contract or order for materials, supplies,
4 equipment, or contractual services to be provided to an agency shall forfeit not less
5 than \$5,000 nor more than \$10,000, plus 3 times the amount of the damages that
6 were sustained by the state or would have been sustained by the state, whichever is
7 greater, as a result of the false claim. The attorney general may bring an action on
8 behalf of the state to recover any forfeiture incurred under this section.

9 **SECTION 2.** 16.871 of the statutes is created to read:

10 **16.871 False claims. (1)** In this section:

11 (a) "Agency" has the meaning given in s. 16.70 (1e).

12 (b) "Construction work" has the meaning given in s. 16.87 (1) (a).

13 (c) "Limited trades work" has the meaning given in s. 16.70 (7).

14 **(2)** Whoever knowingly presents or causes to be presented a false claim under
15 any contract for construction work or limited trades work, or for engineering or
16 architectural services, to be provided to any agency shall forfeit not less than \$5,000
17 nor more than \$10,000, plus 3 times the amount of the damages that were sustained
18 by the state or would have been sustained by the state, whichever is greater, as a
19 result of the false claim. The attorney general may bring an action on behalf of the
20 state to recover any forfeiture incurred under this subsection.

21 **SECTION 3.** 20.931 of the statutes is created to read:

1 **20.931 False claims; actions by or on behalf of state.** (1) In this section:

2 (a) "Authority" has the meaning given in s. 16.70 (2).

3 (b) "Claim" includes any request or demand for money, property, or services
4 made to any officer, employee, or agent of this state, or to any contractor, grantee, or
5 other recipient, whether or not under contract, if any portion of the money, property,
6 or services that are requested or demanded is derived from state resources, or if the
7 state is obligated to reimburse the contractor, grantee, or other recipient for any
8 portion of the money, property, or services that are requested or demanded.

9 (c) "Employer" includes all agencies and authorities.

10 (d) "Knowingly" means, with respect to information, having actual knowledge
11 of the information, acting in deliberate ignorance of the truth or falsity of the
12 information, or acting in reckless disregard of the truth or falsity of the information.
13 "Knowingly" does not mean specifically intending to defraud.

14 (e) "Proceeds" includes damages, civil penalties, surcharges, payments for costs
15 of compliance, and any other economic benefit realized by this state as a result of an
16 action or settlement of a claim.

17 (f) "State public official" has the meaning given in s. 19.42 (14).

18 **(2)** Except as provided in subs. (3) and (4), any person who does any of the
19 following is liable to this state for 3 times the amount of the damages sustained by
20 this state because of the actions of the person, and shall forfeit not less than \$5,000
21 nor more than \$10,000 for each violation:

22 (a) Knowingly presents or causes to be presented to any officer, employee, or
23 agent of this state, or to any contractor, grantee, or other recipient of state resources,
24 a false claim for payment or approval.

1 (b) Knowingly makes, uses, or causes to be made or used a false record or
2 statement to obtain approval or payment of a false claim.

3 (c) Conspires to defraud this state by obtaining allowance or payment of a false
4 claim, or by knowingly making or using, or causing to be made or used, a false record
5 or statement to conceal, avoid, or decrease an obligation to pay or transmit money
6 or property to this state.

7 (d) Has possession, custody, or control of property used or to be used by this
8 state and knowingly delivers or causes to be delivered less property than the amount
9 for which the person receives a certificate or receipt.

10 (e) Being authorized to make or deliver a document certifying receipt of
11 property that is used or to be used by this state, knowingly makes or delivers a receipt
12 that falsely represents the property that is used or to be used.

13 (f) Knowingly buys or receives as a pledge for payment of an obligation or debt
14 for this state property from any person who lawfully may not sell or pledge the
15 property.

16 (g) Knowingly makes, uses, or causes to be made or used a false record or
17 statement to conceal, avoid, or decrease any obligation to pay or transmit money or
18 property to this state.

19 (h) Is a beneficiary of the submission of a false claim to any officer, employee,
20 or agent of this state, or to any contractor, grantee, or other recipient of state
21 resources, knows that the claim is false, and fails to disclose the false claim to this
22 state within a reasonable time after the person becomes aware that the claim is false.

23 **(3)** The court may assess against a person who violates sub. (2) not less than
24 2 nor more than 3 times the amount of the damages sustained by the state because

1 of the acts of the person, and shall not assess any forfeiture, if the court finds all of
2 the following:

3 (a) The person who commits the acts furnished the attorney general with all
4 information known to the person about the acts within 30 days after the date on
5 which the person obtained the information.

6 (b) The person fully cooperated with any investigation of the acts by this state.

7 (c) At the time that the person furnished the attorney general with information
8 concerning the acts, no criminal prosecution or civil or administrative enforcement
9 action had been commenced with respect to any such act, and the person did not have
10 actual knowledge of the existence of any investigation into any such act.

11 (4) Subsections (1) to (3) do not apply to any claim, record, statement, or return
12 made under chs. 70 to 79.

13 (5) (a) Except as provided in subs. (10) and (12), any person may bring a civil
14 action as a qui tam plaintiff against a person who commits an act in violation of sub.
15 (2) for the person and the state in the name of the state.

16 (b) The plaintiff shall serve upon the attorney general a copy of the complaint
17 and documents disclosing substantially all material evidence and information that
18 the person possesses. The plaintiff shall file a copy of the complaint with the court
19 for inspection in camera. Except as provided in par. (c), the complaint shall remain
20 under seal for a period of 60 days from the date of filing, and shall not be served upon
21 the defendant until the court so orders. Within 60 days from the date of service upon
22 the attorney general of the complaint, evidence, and information under this
23 paragraph, the attorney general may intervene in the action.

1 (c) The attorney general may, for good cause shown, move the court for one or
2 more extensions of the period during which a complaint in an action under this
3 subsection remains under seal.

4 (d) Before the expiration of the period during which the complaint remains
5 under seal, the attorney general shall do one of the following:

6 1. Proceed with the action or an alternate remedy under sub. (10), in which case
7 the action or proceeding under sub. (10) shall be prosecuted by the state.

8 2. Notify the court that he or she declines to proceed with the action, in which
9 case the person bringing the action may proceed with the action.

10 (e) If a person brings a valid action under this subsection, no person other than
11 the state may intervene or bring a related action while the original action is pending
12 based upon the same facts underlying the pending action.

13 (f) In any action or other proceeding under sub. (10) brought under this
14 subsection, the plaintiff is required to prove all essential elements of the cause of
15 action or complaint, including damages, by a preponderance of the evidence.

16 (6) If the state proceeds with an action under sub. (5) or an alternate remedy
17 under sub. (10), the state has primary responsibility for prosecuting the action or
18 proceeding under sub. (10). The state is not bound by any act of the person bringing
19 the action, but that person has the right to continue as a party to the action, subject
20 to the limitations under sub. (7).

21 (7) (a) The state may move to dismiss an action under sub. (5) or an
22 administrative proceeding under sub. (10) to which the state is a party for good cause
23 shown, notwithstanding objection of the person bringing the action, if that person is
24 served with a copy of the state's motion and is provided with an opportunity to oppose

1 the motion before the court or the administrative agency before which the proceeding
2 is conducted.

3 (b) With the approval of the governor, the attorney general may compromise
4 and settle an action under sub. (5) or an administrative proceeding under sub. (10)
5 to which the state is a party, notwithstanding objection of the person bringing the
6 action, if the court determines, after affording to the person bringing the action the
7 right to a hearing at which the person is afforded the opportunity to present evidence
8 in opposition to the proposed settlement, that the proposed settlement is fair,
9 adequate, and reasonable considering the relevant circumstances pertaining to the
10 violation.

11 (c) Upon a showing by the state that unrestricted participation in the
12 prosecution of an action under sub. (5) or an alternate proceeding to which the state
13 is a party by the person bringing the action would interfere with or unduly delay the
14 prosecution of the action or proceeding, or would result in consideration of
15 repetitious or irrelevant evidence or evidence presented for purposes of harassment,
16 the court may limit the person's participation in the prosecution, such as:

- 17 1. Limiting the number of witnesses that the person may call.
- 18 2. Limiting the length of the testimony of the witnesses.
- 19 3. Limiting the cross-examination of witnesses by the person.
- 20 4. Otherwise limiting the participation by the person in the prosecution of the
21 action or proceeding.

22 (d) Upon showing by a defendant that unrestricted participation in the
23 prosecution of an action under sub. (5) or alternate proceeding under sub. (10) to
24 which the state is a party by the person bringing the action would result in

1 harassment or would cause the defendant undue burden or unnecessary expense, the
2 court may limit the person's participation in the prosecution.

3 (8) Except as provided in sub. (7), if the state elects not to participate in an
4 action filed under sub. (5), the person bringing the action may prosecute the action.
5 If the attorney general so requests, the attorney general shall, at the state's expense,
6 be served with copies of all pleadings and deposition transcripts in the action. If the
7 person bringing the action initiates prosecution of the action, the court, without
8 limiting the status and rights of that person, may permit the state to intervene at a
9 later date upon showing by the state of good cause for the proposed intervention.

10 (9) Whether or not the state participates in an action under sub. (5), upon
11 showing in camera by the attorney general that discovery by the person bringing the
12 action would interfere with the state's ongoing investigation or prosecution of a
13 criminal or civil matter arising out of the same facts as the facts upon which the
14 action is based, the court may stay such discovery in whole or in part for a period of
15 not more than 60 days. The court may extend the period of any such stay upon
16 further showing in camera by the attorney general that the state has pursued the
17 criminal or civil investigation of the matter with reasonable diligence and the
18 proposed discovery in the action brought under sub. (5) will interfere with the
19 ongoing criminal or civil investigation or prosecution.

20 (10) The attorney general may pursue a claim relating to an alleged violation
21 of sub. (2) through an alternate remedy available to the state or any state agency,
22 including an administrative proceeding to assess a civil forfeiture. If the attorney
23 general elects any such alternate remedy, the attorney general shall serve timely
24 notice of his or her election upon the person bringing the action under sub. (5), and
25 that person has the same rights in the alternate venue as the person would have had

1 if the action had continued under sub. (5). Any finding of fact or conclusion of law
2 made by a court or by a state agency in the alternate venue that has become final is
3 conclusive upon all parties named in an action under sub. (5). For purposes of this
4 subsection, a finding or conclusion is final if it has been finally determined on appeal,
5 if all time for filing an appeal or petition for review with respect to the finding or
6 conclusion has expired, or if the finding or conclusion is not subject to judicial review.

7 (11) (a) Except as provided in pars. (b) and (e), if the state proceeds with an
8 action brought by a person under sub. (5) or the state pursues an alternate remedy
9 relating to the same acts under sub. (10), the person who brings the action shall
10 receive at least 15 percent but not more than 25 percent of the proceeds of the action
11 or settlement of the claim, depending upon the extent to which the person
12 contributed to the prosecution of the action or claim.

13 (b) Except as provided in par. (e), if an action or claim is one in which the court
14 or other adjudicator finds to be based primarily upon disclosures of specific
15 information not provided by the person who brings an action under sub. (5) relating
16 to allegations or transactions specifically in a criminal, civil, or administrative
17 hearing, or in a legislative or administrative report, hearing, audit, or investigation,
18 or report made by the news media, the court or other adjudicator may award such
19 amount as it considers appropriate, but not more than 10 percent of the proceeds of
20 the action or settlement of the claim, depending upon the significance of the
21 information and the role of the person bringing the action in advancing the
22 prosecution of the action or claim.

23 (c) Except as provided in par. (e), in addition to any amount received under par.
24 (a) or (b), a person bringing an action under sub. (5) shall be awarded his or her
25 reasonable expenses necessarily incurred in bringing the action together with the

1 person's costs and reasonable actual attorney fees. The court or other adjudicator
2 shall assess any award under this paragraph against the defendant.

3 (d) Except as provided in par. (e), if the state does not proceed with an action
4 or an alternate proceeding under sub. (10), the person bringing the action shall
5 receive an amount that the court decides is reasonable for collection of the civil
6 penalty and damages. The amount shall be not less than 25 percent and not more
7 than 30 percent of the proceeds of the action and shall be paid from the proceeds. In
8 addition, the person shall be paid his or her expenses, costs, and fees under par. (c).

9 (e) Whether or not the state proceeds with the action or an alternate proceeding
10 under sub. (10), if the court or other adjudicator finds that an action under sub. (5)
11 was brought by a person who planned or initiated the violation upon which the action
12 or proceeding is based, then the court may, to the extent that the court considers
13 appropriate, reduce the share of the proceeds of the action that the person would
14 otherwise receive under par. (a), (b), or (d), taking into account the role of that person
15 in advancing the prosecution of the action or claim and any other relevant
16 circumstance pertaining to the violation, except that if the person bringing the action
17 is convicted of criminal conduct arising from his or her role in a violation of sub. (2),
18 the court or other adjudicator shall dismiss the person as a party and the person shall
19 not receive any share of the proceeds of the action or claim or any expenses, costs, and
20 fees under par. (c).

21 (f) If the state does not proceed with an action or claim filed under this section
22 and the person bringing the action prosecutes the action, the court may award to the
23 defendant his or her reasonable actual attorney fees and reasonable expenses
24 incurred in defending the action to the extent permitted under s. 802.05 (3) if the
25 court finds under s. 802.05 (2) that the claim of the person bringing the action was

1 clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment,
2 or that, for other cause under s. 802.05 (2), an award of attorney fees and costs is
3 justified.

****NOTE: You may wish to review s. 802.05 to see if that statute is more comprehensive and as sufficient to cover any problems that may arise.

4 (12) (a) No court has jurisdiction over an action brought by a private person
5 under sub. (5) against a state public official if the action is based upon information
6 known to the attorney general at the time that the action is brought.

****NOTE: Please review this language. No court has jurisdiction over a qui tam action brought by a private person against a state public official if the action is based upon information known to the attorney general at the time the action is brought—this is problematic because a qui tam plaintiff may have no way of knowing what information was known to the attorney general.

7 (b) No person may bring an action under sub. (5) that is based upon allegations
8 or transactions that are the subject of a civil action or an administrative proceeding
9 to assess a civil forfeiture in which the state is a party if that action or proceeding
10 was commenced prior to the date that the action is filed.

11 (13) The state is not liable for any expenses incurred by a private person in
12 bringing an action under sub. (5).

13 (14) Any employee who is discharged, demoted, suspended, threatened,
14 harassed, or in any other manner discriminated against by his or her employer
15 because of lawful actions taken by the employee, on behalf of the employee, or by
16 others in furtherance of an action or claim filed under this section, including
17 investigation for, initiation of, testimony for, or assistance in an action or claim filed
18 or to be filed under sub. (5) is entitled to all necessary relief to make the employee
19 whole. Such relief shall in each case include reinstatement with the same seniority
20 status that the employee would have had but for the discrimination, 2 times the
21 amount of back pay, interest on the back pay at the legal rate, and compensation for

1 any special damages sustained as a result of the discrimination, including costs and
2 reasonable actual attorney fees. An employee may bring an action to obtain the relief
3 to which the employee is entitled under this subsection.

4 (15) A civil action may be brought based upon acts occurring prior to the
5 effective date of this subsection [revisor inserts date], if the action is brought
6 within the period specified in s. 893.981.

****NOTE: This section expressly imposes liability, including liability for civil
forfeitures, for acts occurring prior to enactment of the bill resulting from this draft. This
provision may be considered to be a penal statute. Retroactive operation of penal statutes
may raise due process issues which could affect the enforceability of this provision.

7 (16) A judgment of guilty entered against a defendant in a criminal action in
8 which the defendant is charged with fraud or making false statements estops the
9 defendant from denying the essential elements of the offense in any action under sub.
10 (5) that involves the same elements as in the criminal action.

11 (17) The remedies provided for under this section are in addition to any other
12 remedies provided for under any other law or available under the common law.

13 (18) This section shall be liberally construed and applied to promote the public
14 interest and to effect the congressional intent in enacting 31 USC 3279 to 3733, as
15 reflected in the act and the legislative history of the act.

16 SECTION 4. 23.41 (5) of the statutes is amended to read:

17 23.41 (5) Each contract for construction work entered into by the department
18 under this section shall be awarded on the basis of bids or competitive sealed
19 proposals in accordance with procedures established by the department. Each
20 contract for construction work shall be awarded to the lowest responsible bidder or
21 the person submitting the most advantageous competitive sealed proposal as
22 determined by the department. If the bid of the lowest responsible bidder or the
23 proposal of the person submitting the most advantageous competitive sealed

1 proposal is determined by the department to be in excess of the estimated reasonable
2 value of the work or not in the public interest, the department may reject all bids or
3 competitive sealed proposals. Every such contract is exempted from ss. 16.70 to
4 16.75, 16.755, 16.76, 16.767 to 16.77, 16.78 to 16.82, 16.855, 16.87, and 16.89, but ss.
5 16.528, 16.753, 16.754, and 16.765, 16.771, and 16.871 apply to the contract. Every
6 such contract involving an expenditure of more than \$60,000 is not valid until the
7 contract is approved by the governor.

8 **SECTION 5.** 25.18 (1) (a) of the statutes is amended to read:

9 25.18 (1) (a) Notwithstanding s. 20.930 and all provisions of subch. IV of ch.
10 16, except s. ss. 16.753 and 16.771, employ special legal or investment counsel in any
11 matters arising out of the scope of its investment authority. Section 16.753 does not
12 apply to the employment of legal or investment counsel for the purpose of assisting
13 the board with investments. The employment of special legal counsel shall be with
14 the advice and consent of the attorney general whenever such special counsel is to
15 be compensated by the board. Any expense of counsel so employed shall be borne by
16 the fund for which the services shall be furnished.

17 **SECTION 6.** 25.18 (1) (f) of the statutes is amended to read:

18 25.18 (1) (f) Maintain and repair any building or other structure or premises
19 which it owns in fee or in which it owns the beneficial interest and, notwithstanding
20 all provisions of subch. IV or V of ch. 16, except s. ss. 16.753, 16.771, and 16.871, it
21 shall have exclusive authority to make such agreements and enter into such
22 contracts as it deems necessary for such purpose. Section 16.753 does not apply to
23 agreements and contracts entered into by the board for the purpose of assisting the
24 board with investments. All noncapital costs under this paragraph shall be charged

1 to the current income accounts of the funds having an interest in the building,
2 structure or premises.

3 **SECTION 7.** 25.18 (1) (m) of the statutes is amended to read:

4 25.18 (1) (m) Notwithstanding all provisions of subchs. IV and V of ch. 16,
5 except ~~s. ss. 16.753, 16.771, and 16.871~~, employ professionals, contractors or other
6 agents necessary to evaluate or operate any property if a fund managed by the board
7 has an interest in, or is considering purchasing or lending money based upon the
8 value of, that property. Section 16.753 does not apply to the employment of any
9 person for the purpose of assisting the board with investments. Costs under this
10 paragraph shall be paid by the fund and charged to the appropriate account under
11 s. 40.04 (3).

12 **SECTION 8.** 66.0902 of the statutes is created to read:

13 **66.0902 False claims. (1) DEFINITIONS.** In this section:

14 (a) "Local governmental unit" has the meaning given in s. 66.0131 (1) (a).

15 (b) "Public contract" means a contract for the construction, execution, repair,
16 remodeling, or improvement of a public work or building or for the furnishing of
17 supplies, equipment, material, or professional or contractual services of any kind.

18 (2) **PRESENTATION OF FALSE CLAIMS.** Whoever knowingly presents or causes to
19 be presented a false claim for payment under any public contract with a local
20 governmental unit shall forfeit not less than \$5,000 nor more than \$10,000, plus 3
21 times the amount of the damages that were sustained by the local governmental unit
22 or would have been sustained by the local governmental unit, whichever is greater,
23 as a result of the false claim.

24 **SECTION 9.** 84.01 (13) of the statutes is amended to read:

SECTION 9

1 84.01 (13) ENGINEERING SERVICES. The department may engage such
2 engineering, consulting, surveying, or other specialized services as it deems
3 advisable. Any engagement of services under this subsection is exempt from ss.
4 16.70 to 16.75, 16.755 to 16.77, 16.78 to 16.82, and 16.85 to 16.87, and 16.875 to 16.89,
5 but ss. 16.528, 16.752, 16.753, and 16.754, 16.771, and 16.871 apply to such
6 engagement. Any engagement involving an expenditure of \$3,000 or more shall be
7 by formal contract approved by the governor. The department shall conduct a
8 uniform cost-benefit analysis, as defined in s. 16.70 (3g), of each proposed
9 engagement under this subsection that involves an estimated expenditure of more
10 than \$25,000 in accordance with standards prescribed by rule of the department. The
11 department shall review periodically, and before any renewal, the continued
12 appropriateness of contracting pursuant to each engagement under this subsection
13 that involves an estimated expenditure of more than \$25,000.

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

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

1 contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.77, 16.78 to 16.82, 16.87
2 and 16.89, but ss. 16.528, 16.752, 16.753, and 16.754, 16.771, and 16.871 apply to the
3 contract. Any such contract involving an expenditure of \$1,000 or more shall not be
4 valid until approved by the governor. The secretary may require the attorney general
5 to examine any contract and any bond submitted in connection with the contract and
6 report on its sufficiency of form and execution. The bond required by s. 779.14 (1m)
7 is exempt from approval by the governor and shall be subject to approval by the
8 secretary. This subsection also applies to contracts with private contractors based
9 on bids for maintenance under s. 84.07.

10 **SECTION 11.** 84.06 (3) of the statutes is amended to read:

11 **84.06 (3) CONTRACTS WITH COUNTY OR MUNICIPALITY; DIRECT LABOR; MATERIALS.** If
12 the department finds that it would be more feasible and advantageous to have the
13 improvement performed by the county in which the proposed improvement is located
14 and without bids, the department may, by arrangement with the county highway
15 committee of the county, enter into a contract satisfactory to the department to have
16 the work done by the county forces and equipment. In such contract the department
17 may authorize the county to purchase, deliver, and store materials and may fix the
18 rental rates of small tools and equipment. The contract shall be between the county
19 and the state and shall not be based on bids, and may be entered into on behalf of the
20 county by the county highway committee and on behalf of the state by the secretary.
21 Such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230,
22 except ss. 16.753 and, 16.754, 16.771, and 16.871. If the total estimated
23 indebtedness to be incurred exceeds \$5,000 the contract shall not be valid until
24 approved by the governor. The provisions of this subsection relating to agreements
25 between a county and the state shall also authorize and apply to such arrangements

1 between a city, town, or a village and the state. In such cases, the governing body
2 of the city, town, or village shall enter into the agreement on behalf of the
3 municipality.

4 **SECTION 12.** 84.06 (4) of the statutes is amended to read:

5 84.06 (4) SPECIAL CONTRACTS WITH RAILROADS AND UTILITIES. If an improvement
6 undertaken by the department will cross or affect the property or facilities of a
7 railroad or public utility company, the department may, upon finding that it is
8 feasible and advantageous to the state, arrange to perform portions of the
9 improvement work affecting such facilities or property or perform work of altering,
10 rearranging, or relocating such facilities by contract with the railroad or public
11 utility. Such contract shall be between the railroad company or public utility and the
12 state and need not be based on bids. The contract may be entered into on behalf of
13 the state by the secretary. Every such contract is exempted from s. 779.14 and from
14 all provisions of chs. 16 and 230, except ss. 16.528, 16.752, 16.753, and 16.754,
15 16.771, and 16.871. No such contract in which the total estimated debt to be incurred
16 exceeds \$5,000 shall be valid until approved by the governor. As used in this
17 subsection, "public utility" means the same as in s. 196.01 (5), and includes a
18 telecommunications carrier as defined in s. 196.01 (8m), and "railroad" means the
19 same as in s. 195.02. "Property" as used in this subsection includes but is not limited
20 to tracks, trestles, signals, grade crossings, rights-of-way, stations, pole lines,
21 plants, substations, and other facilities. Nothing in this subsection shall be
22 construed to relieve any railroad or public utility from any financial obligation,
23 expense, duty, or responsibility otherwise provided by law relative to such property.

24 **SECTION 13.** 85.015 of the statutes is amended to read:

1 **85.015 Transportation assistance contracts.** All contracts entered into
2 under this chapter to provide financial assistance in the areas of railroads, urban
3 mass transit, specialized transportation, and harbors are subject to ss. 16.528,
4 16.752, and 16.753, 16.771, and 16.871 but are exempt from ss. 16.70 to 16.75, 16.755
5 to 16.77, 16.78 to 16.82, 16.85 to 16.87, and 16.875 to 16.89.

6 **SECTION 14.** 102.81 (2) of the statutes is amended to read:

7 **102.81 (2)** The department may retain an insurance carrier or insurance
8 service organization to process, investigate and pay claims under this section and
9 may obtain excess or stop-loss reinsurance with an insurance carrier authorized to
10 do business in this state in an amount that the secretary determines is necessary for
11 the sound operation of the uninsured employers fund. In cases involving disputed
12 claims, the department may retain an attorney to represent the interests of the
13 uninsured employers fund and to make appearances on behalf of the uninsured
14 employers fund in proceedings under ss. 102.16 to 102.29. Section 20.930 and all
15 provisions of subch. IV of ch. 16, except ss. 16.753 and 16.771, do not apply to an
16 attorney hired under this subsection. The charges for the services retained under
17 this subsection shall be paid from the appropriation under s. 20.445 (1) (rp). The cost
18 of any reinsurance obtained under this subsection shall be paid from the
19 appropriation under s. 20.445 (1) (sm).

20 **SECTION 15.** 165.08 of the statutes is amended to read:

21 **165.08 Power to compromise.** Any civil action prosecuted by the
22 department by direction of any officer, department, board or commission, shall be
23 compromised or discontinued when so directed by such officer, department, board or
24 commission. Any Except as provided in s. 20.931 (7) (b), any civil action prosecuted
25 by the department on the initiative of the attorney general, or at the request of any

1 individual may be compromised or discontinued with the approval of the governor.
2 In any criminal action prosecuted by the attorney general, the department shall have
3 the same powers with reference to such action as are vested in district attorneys.

4 **SECTION 16.** 165.25 (11) of the statutes is created to read:

5 165.25 (11) FALSE CLAIMS. Diligently investigate possible violations of s. 20.931,
6 and, if the department determines that a person has committed an act that is
7 punishable under s. 20.931, may bring a civil action against that person.

8 **SECTION 17.** 221.0903 (4) (b) of the statutes is amended to read:

9 221.0903 (4) (b) *Contracts for examination services.* The division may enter
10 into contracts with any bank supervisory agency with concurrent jurisdiction over
11 a state bank or an in-state branch of an out-of-state state bank to engage the
12 services of the agency's examiners at a reasonable rate of compensation, or to provide
13 the services of the division's examiners to the agency at a reasonable rate of
14 compensation. Contracts entered into under this paragraph are exempt from ss.
15 16.70 to 16.752, 16.754 to 16.76, and 16.767 to 16.77, and 16.78 to 16.82.

16 **SECTION 18.** 655.27 (2) of the statutes is amended to read:

17 655.27 (2) FUND ADMINISTRATION AND OPERATION. Management of the fund shall
18 be vested with the board of governors. The commissioner shall either provide staff
19 services necessary for the operation of the fund or, with the approval of the board of
20 governors, contract for all or part of these services. Such a contract is subject to ss.
21 16.753 and, 16.765, and 16.771, but is otherwise exempt from subch. IV of ch. 16. The
22 commissioner shall adopt rules governing the procedures for creating and
23 implementing these contracts before entering into the contracts. At least annually,
24 the contractor shall report to the commissioner and to the board of governors
25 regarding all expenses incurred and subcontracting arrangements. If the board of

1 governors approves, the contractor may hire legal counsel as needed to provide staff
2 services. The cost of contracting for staff services shall be funded from the
3 appropriation under s. 20.145 (2) (u).

4 **SECTION 19.** 801.02 (1) of the statutes is amended to read:

5 801.02 (1) ~~A~~ Except as provided in s. 20.931 (5) (b), a civil action in which a
6 personal judgment is sought is commenced as to any defendant when a summons and
7 a complaint naming the person as defendant are filed with the court, provided service
8 of an authenticated copy of the summons and of the complaint is made upon the
9 defendant under this chapter within 90 days after filing.

10 **SECTION 20.** 803.09 (1) and (2) of the statutes are amended to read:

11 803.09 (1) ~~Upon~~ Except as provided in s. 20.931, upon timely motion anyone
12 shall be permitted to intervene in an action when the movant claims an interest
13 relating to the property or transaction which is the subject of the action and the
14 movant is so situated that the disposition of the action may as a practical matter
15 impair or impede the movant's ability to protect that interest, unless the movant's
16 interest is adequately represented by existing parties.

17 (2) ~~Upon~~ Except as provided in s. 20.931, upon timely motion anyone may be
18 permitted to intervene in an action when a movant's claim or defense and the main
19 action have a question of law or fact in common. When a party to an action relies for
20 ground of claim or defense upon any statute or executive order or rule administered
21 by a federal or state governmental officer or agency or upon any regulation, order,
22 rule, requirement or agreement issued or made pursuant to the statute or executive
23 order, the officer or agency upon timely motion may be permitted to intervene in the
24 action. In exercising its discretion the court shall consider whether the intervention
25 will unduly delay or prejudice the adjudication of the rights of the original parties.

1 **SECTION 21.** 804.01 (2) (intro.) of the statutes is amended to read:

2 804.01 (2) SCOPE OF DISCOVERY. (intro.) ~~Unless~~ Except as provided in s. 20.931
3 (9), and unless otherwise limited by order of the court in accordance with the
4 provisions of this chapter, the scope of discovery is as follows:

5 **SECTION 22.** 805.04 (1) of the statutes is amended to read:

6 805.04 (1) BY PLAINTIFF; BY STIPULATION. An Except as provided in sub. (2m), an
7 action may be dismissed by the plaintiff without order of court by serving and filing
8 a notice of dismissal at any time before service by an adverse party of responsive
9 pleading or motion or by the filing of a stipulation of dismissal signed by all parties
10 who have appeared in the action. Unless otherwise stated in the notice of dismissal
11 or stipulation, the dismissal is not on the merits, except that a notice of dismissal
12 operates as an adjudication on the merits when filed by a plaintiff who has once
13 dismissed in any court an action based on or including the same claim.

14 **SECTION 23.** 805.04 (2m) of the statutes is created to read:

15 805.04 (2m) FALSE CLAIMS. An action filed under s. 20.931 may be dismissed
16 only by order of the court. In determining whether to dismiss the action filed under
17 s. 20.931, the court shall take into account the best interests of the parties and the
18 purposes of s. 20.931.

19 **SECTION 24.** 893.981 of the statutes is created to read:

20 **893.981 False claims.** An action or claim under s. 20.931 shall be commenced
21 within 10 years after the cause of the action or claim accrues or be barred.

22 **SECTION 9329. Initial applicability; Justice.**

23 (1) FALSE CLAIMS. The treatment of sections 16.771, 16.871, 23.41 (5), 25.18 (1)
24 (a), (f), and (m), 66.0902. 84.01 (13), 84.06 (2) (a), (3), and (4), 85.015, 102.81 (2),
25 221.0903 (4) (b), and 655.27 (2) of the statutes first applies with respect to false

1 claims that are presented or caused to be presented on the effective date of this
2 subsection.

3 (END)