



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0444/P2  
CMH&MES:wlj:nwn  
↑  
STAYS

Feb 10

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

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

D-Note

DO NOT GEN

- 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:

**SECTION 3**

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

**SECTION 3**

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

**SECTION 3**

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

24 (b) No person may bring an action under sub. (5) that is based upon allegations  
25 or transactions that are the subject of a civil action or an administrative proceeding

**SECTION 3**

1 to assess a civil forfeiture in which the state is a party if that action or proceeding  
2 was commenced prior to the date that the action is filed.

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

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

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

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

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

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

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

5           **23.41 (5)** Each contract for construction work entered into by the department  
6 under this section shall be awarded on the basis of bids or competitive sealed  
7 proposals in accordance with procedures established by the department. Each  
8 contract for construction work shall be awarded to the lowest responsible bidder or  
9 the person submitting the most advantageous competitive sealed proposal as  
10 determined by the department. If the bid of the lowest responsible bidder or the  
11 proposal of the person submitting the most advantageous competitive sealed  
12 proposal is determined by the department to be in excess of the estimated reasonable  
13 value of the work or not in the public interest, the department may reject all bids or  
14 competitive sealed proposals. Every such contract is exempted from ss. 16.70 to  
15 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 16.528, 16.753, 16.754, and 16.765, 16.771, and 16.871 apply to the contract. Every  
17 such contract involving an expenditure of more than \$60,000 is not valid until the  
18 contract is approved by the governor.

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

20           **25.18 (1) (a)** Notwithstanding s. 20.930 and all provisions of subch. IV of ch.  
21 16, except s. ss. 16.753 and 16.771, employ special legal or investment counsel in any  
22 matters arising out of the scope of its investment authority. Section 16.753 does not  
23 apply to the employment of legal or investment counsel for the purpose of assisting  
24 the board with investments. The employment of special legal counsel shall be with  
25 the advice and consent of the attorney general whenever such special counsel is to

**SECTION 5**

1 be compensated by the board. Any expense of counsel so employed shall be borne by  
2 the fund for which the services shall be furnished.

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

4 25.18 (1) (f) Maintain and repair any building or other structure or premises  
5 which it owns in fee or in which it owns the beneficial interest and, notwithstanding  
6 all provisions of subch. IV or V of ch. 16, except ~~s. ss. 16.753, 16.771, and 16.871~~, it  
7 shall have exclusive authority to make such agreements and enter into such  
8 contracts as it deems necessary for such purpose. Section 16.753 does not apply to  
9 agreements and contracts entered into by the board for the purpose of assisting the  
10 board with investments. All noncapital costs under this paragraph shall be charged  
11 to the current income accounts of the funds having an interest in the building,  
12 structure or premises.

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

14 25.18 (1) (m) Notwithstanding all provisions of subchs. IV and V of ch. 16,  
15 except ~~s. ss. 16.753, 16.771, and 16.871~~, employ professionals, contractors or other  
16 agents necessary to evaluate or operate any property if a fund managed by the board  
17 has an interest in, or is considering purchasing or lending money based upon the  
18 value of, that property. Section 16.753 does not apply to the employment of any  
19 person for the purpose of assisting the board with investments. Costs under this  
20 paragraph shall be paid by the fund and charged to the appropriate account under  
21 s. 40.04 (3).

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

23 **66.0902 False claims. (1) DEFINITIONS.** In this section:

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

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

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

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

11 84.01 (13) ENGINEERING SERVICES. The department may engage such  
12 engineering, consulting, surveying, or other specialized services as it deems  
13 advisable. Any engagement of services under this subsection is exempt from ss.  
14 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,  
15 but ss. 16.528, 16.752, 16.753, and 16.754, 16.771, and 16.871 apply to such  
16 engagement. Any engagement involving an expenditure of \$3,000 or more shall be  
17 by formal contract approved by the governor. The department shall conduct a  
18 uniform cost-benefit analysis, as defined in s. 16.70 (3g), of each proposed  
19 engagement under this subsection that involves an estimated expenditure of more  
20 than \$25,000 in accordance with standards prescribed by rule of the department. The  
21 department shall review periodically, and before any renewal, the continued  
22 appropriateness of contracting pursuant to each engagement under this subsection  
23 that involves an estimated expenditure of more than \$25,000.

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

**SECTION 10**

1           84.06 (2) (a) All such highway improvements shall be executed by contract  
2 based on bids unless the department finds that another method as provided in sub.  
3 (3) or (4) would be more feasible and advantageous. Bids shall be advertised for in  
4 the manner determined by the department. Except as provided in s. 84.075, the  
5 contract shall be awarded to the lowest competent and responsible bidder as  
6 determined by the department. If the bid of the lowest competent bidder is  
7 determined by the department to be in excess of the estimated reasonable value of  
8 the work or not in the public interest, all bids may be rejected. The department shall,  
9 so far as reasonable, follow uniform methods of advertising for bids and may  
10 prescribe and require uniform forms of bids and contracts. Except as provided in par.  
11 (b), the secretary shall enter into the contract on behalf of the state. Every such  
12 contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.77, 16.78 to 16.82, 16.87  
13 and 16.89, but ss. 16.528, 16.752, 16.753, and 16.754, 16.771, and 16.871 apply to the  
14 contract. Any such contract involving an expenditure of \$1,000 or more shall not be  
15 valid until approved by the governor. The secretary may require the attorney general  
16 to examine any contract and any bond submitted in connection with the contract and  
17 report on its sufficiency of form and execution. The bond required by s. 779.14 (1m)  
18 is exempt from approval by the governor and shall be subject to approval by the  
19 secretary. This subsection also applies to contracts with private contractors based  
20 on bids for maintenance under s. 84.07.

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

22           84.06 (3) **CONTRACTS WITH COUNTY OR MUNICIPALITY; DIRECT LABOR; MATERIALS.** If  
23 the department finds that it would be more feasible and advantageous to have the  
24 improvement performed by the county in which the proposed improvement is located  
25 and without bids, the department may, by arrangement with the county highway



1 committee of the county, enter into a contract satisfactory to the department to have  
2 the work done by the county forces and equipment. In such contract the department  
3 may authorize the county to purchase, deliver, and store materials and may fix the  
4 rental rates of small tools and equipment. The contract shall be between the county  
5 and the state and shall not be based on bids, and may be entered into on behalf of the  
6 county by the county highway committee and on behalf of the state by the secretary.  
7 Such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230,  
8 except ss. 16.753 and, 16.754, 16.771, and 16.871. If the total estimated  
9 indebtedness to be incurred exceeds \$5,000 the contract shall not be valid until  
10 approved by the governor. The provisions of this subsection relating to agreements  
11 between a county and the state shall also authorize and apply to such arrangements  
12 between a city, town, or a village and the state. In such cases, the governing body  
13 of the city, town, or village shall enter into the agreement on behalf of the  
14 municipality.

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

16 84.06 (4) SPECIAL CONTRACTS WITH RAILROADS AND UTILITIES. If an improvement  
17 undertaken by the department will cross or affect the property or facilities of a  
18 railroad or public utility company, the department may, upon finding that it is  
19 feasible and advantageous to the state, arrange to perform portions of the  
20 improvement work affecting such facilities or property or perform work of altering,  
21 rearranging, or relocating such facilities by contract with the railroad or public  
22 utility. Such contract shall be between the railroad company or public utility and the  
23 state and need not be based on bids. The contract may be entered into on behalf of  
24 the state by the secretary. Every such contract is exempted from s. 779.14 and from  
25 all provisions of chs. 16 and 230, except ss. 16.528, 16.752, 16.753, and 16.754,

**SECTION 12**

1 16.771, and 16.871. No such contract in which the total estimated debt to be incurred  
2 exceeds \$5,000 shall be valid until approved by the governor. As used in this  
3 subsection, “public utility” means the same as in s. 196.01 (5), and includes a  
4 telecommunications carrier as defined in s. 196.01 (8m), and “railroad” means the  
5 same as in s. 195.02. “Property” as used in this subsection includes but is not limited  
6 to tracks, trestles, signals, grade crossings, rights-of-way, stations, pole lines,  
7 plants, substations, and other facilities. Nothing in this subsection shall be  
8 construed to relieve any railroad or public utility from any financial obligation,  
9 expense, duty, or responsibility otherwise provided by law relative to such property.

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

11 **85.015 Transportation assistance contracts.** All contracts entered into  
12 under this chapter to provide financial assistance in the areas of railroads, urban  
13 mass transit, specialized transportation, and harbors are subject to ss. 16.528,  
14 16.752, and 16.753, 16.771, and 16.871 but are exempt from ss. 16.70 to 16.75, 16.755  
15 to 16.77, 16.78 to 16.82, 16.85 to 16.87, and 16.875 to 16.89.

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

17 102.81 (2) The department may retain an insurance carrier or insurance  
18 service organization to process, investigate and pay claims under this section and  
19 may obtain excess or stop-loss reinsurance with an insurance carrier authorized to  
20 do business in this state in an amount that the secretary determines is necessary for  
21 the sound operation of the uninsured employers fund. In cases involving disputed  
22 claims, the department may retain an attorney to represent the interests of the  
23 uninsured employers fund and to make appearances on behalf of the uninsured  
24 employers fund in proceedings under ss. 102.16 to 102.29. Section 20.930 and all  
25 provisions of subch. IV of ch. 16, except ss. 16.753 and 16.771, do not apply to an

1 attorney hired under this subsection. The charges for the services retained under  
2 this subsection shall be paid from the appropriation under s. 20.445 (1) (rp). The cost  
3 of any reinsurance obtained under this subsection shall be paid from the  
4 appropriation under s. 20.445 (1) (sm).

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

6 **165.08 Power to compromise.** Any civil action prosecuted by the  
7 department by direction of any officer, department, board or commission, shall be  
8 compromised or discontinued when so directed by such officer, department, board or  
9 commission. Any Except as provided in s. 20.931 (7) (b), any civil action prosecuted  
10 by the department on the initiative of the attorney general, or at the request of any  
11 individual may be compromised or discontinued with the approval of the governor.  
12 In any criminal action prosecuted by the attorney general, the department shall have  
13 the same powers with reference to such action as are vested in district attorneys.

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

15 **165.25 (11) FALSE CLAIMS.** Diligently investigate possible violations of s. 20.931,  
16 and, if the department determines that a person has committed an act that is  
17 punishable under s. 20.931, may bring a civil action against that person.

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

19 **221.0903 (4) (b) Contracts for examination services.** The division may enter  
20 into contracts with any bank supervisory agency with concurrent jurisdiction over  
21 a state bank or an in-state branch of an out-of-state state bank to engage the  
22 services of the agency's examiners at a reasonable rate of compensation, or to provide  
23 the services of the division's examiners to the agency at a reasonable rate of  
24 compensation. Contracts entered into under this paragraph are exempt from ss.  
25 16.70 to 16.752, 16.754 to 16.76, and 16.767 to 16.77, and 16.78 to 16.82.

**SECTION 18**

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

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

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

15           801.02 (1) ~~A- Except as provided in s. 20.931 (5) (b), a civil action in which a~~  
16 personal judgment is sought is commenced as to any defendant when a summons and  
17 a complaint naming the person as defendant are filed with the court, provided service  
18 of an authenticated copy of the summons and of the complaint is made upon the  
19 defendant under this chapter within 90 days after filing.

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

21           803.09 (1) Upon Except as provided in s. 20.931, upon timely motion anyone  
22 shall be permitted to intervene in an action when the movant claims an interest  
23 relating to the property or transaction which is the subject of the action and the  
24 movant is so situated that the disposition of the action may as a practical matter

1 impair or impede the movant's ability to protect that interest, unless the movant's  
2 interest is adequately represented by existing parties.

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

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

13 804.01 (2) SCOPE OF DISCOVERY. (intro.) ~~Unless~~ Except as provided in s. 20.931  
14 (9), and unless otherwise limited by order of the court in accordance with the  
15 provisions of this chapter, the scope of discovery is as follows:

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

17 805.04 (1) BY PLAINTIFF; BY STIPULATION. ~~An~~ Except as provided in sub. (2m), an  
18 action may be dismissed by the plaintiff without order of court by serving and filing  
19 a notice of dismissal at any time before service by an adverse party of responsive  
20 pleading or motion or by the filing of a stipulation of dismissal signed by all parties  
21 who have appeared in the action. Unless otherwise stated in the notice of dismissal  
22 or stipulation, the dismissal is not on the merits, except that a notice of dismissal  
23 operates as an adjudication on the merits when filed by a plaintiff who has once  
24 dismissed in any court an action based on or including the same claim.

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



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

LRB-0444/P3dn  
CMH:wlj:jf

February 6, 2007

This draft reconciles -0388/2 and -0444/P2 by combining the treatments of s. 655.27 (2) and putting the combined section in -0388. Both drafts should continue to appear in the compile.

Cathlene Hanaman  
Legislative Attorney  
Phone: (608) 267-9810  
E-mail: [cathlene.hanaman@legis.wisconsin.gov](mailto:cathlene.hanaman@legis.wisconsin.gov)



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0444/P3  
CMH&MES:wlj:jf

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

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

- 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

**SECTION 3**

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

**SECTION 3**

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

24 (b) No person may bring an action under sub. (5) that is based upon allegations  
25 or transactions that are the subject of a civil action or an administrative proceeding

**SECTION 3**

1 to assess a civil forfeiture in which the state is a party if that action or proceeding  
2 was commenced prior to the date that the action is filed.

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

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

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

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

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

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

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

5           **23.41 (5)** Each contract for construction work entered into by the department  
6 under this section shall be awarded on the basis of bids or competitive sealed  
7 proposals in accordance with procedures established by the department. Each  
8 contract for construction work shall be awarded to the lowest responsible bidder or  
9 the person submitting the most advantageous competitive sealed proposal as  
10 determined by the department. If the bid of the lowest responsible bidder or the  
11 proposal of the person submitting the most advantageous competitive sealed  
12 proposal is determined by the department to be in excess of the estimated reasonable  
13 value of the work or not in the public interest, the department may reject all bids or  
14 competitive sealed proposals. Every such contract is exempted from ss. 16.70 to  
15 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 16.528, 16.753, 16.754, and 16.765, 16.771, and 16.871 apply to the contract. Every  
17 such contract involving an expenditure of more than \$60,000 is not valid until the  
18 contract is approved by the governor.

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

20           **25.18 (1) (a)** Notwithstanding s. 20.930 and all provisions of subch. IV of ch.  
21 16, except s. ss. 16.753 and 16.771, employ special legal or investment counsel in any  
22 matters arising out of the scope of its investment authority. Section 16.753 does not  
23 apply to the employment of legal or investment counsel for the purpose of assisting  
24 the board with investments. The employment of special legal counsel shall be with  
25 the advice and consent of the attorney general whenever such special counsel is to

1 be compensated by the board. Any expense of counsel so employed shall be borne by  
2 the fund for which the services shall be furnished.

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

4 25.18 (1) (f) Maintain and repair any building or other structure or premises  
5 which it owns in fee or in which it owns the beneficial interest and, notwithstanding  
6 all provisions of subch. IV or V of ch. 16, except ~~s. ss. 16.753, 16.771, and 16.871~~, it  
7 shall have exclusive authority to make such agreements and enter into such  
8 contracts as it deems necessary for such purpose. Section 16.753 does not apply to  
9 agreements and contracts entered into by the board for the purpose of assisting the  
10 board with investments. All noncapital costs under this paragraph shall be charged  
11 to the current income accounts of the funds having an interest in the building,  
12 structure or premises.

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

14 25.18 (1) (m) Notwithstanding all provisions of subchs. IV and V of ch. 16,  
15 except ~~s. ss. 16.753, 16.771, and 16.871~~, employ professionals, contractors or other  
16 agents necessary to evaluate or operate any property if a fund managed by the board  
17 has an interest in, or is considering purchasing or lending money based upon the  
18 value of, that property. Section 16.753 does not apply to the employment of any  
19 person for the purpose of assisting the board with investments. Costs under this  
20 paragraph shall be paid by the fund and charged to the appropriate account under  
21 s. 40.04 (3).

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

23 **66.0902 False claims. (1) DEFINITIONS.** In this section:

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

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

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

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

11 84.01 (13) ENGINEERING SERVICES. The department may engage such  
12 engineering, consulting, surveying, or other specialized services as it deems  
13 advisable. Any engagement of services under this subsection is exempt from ss.  
14 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,  
15 but ss. 16.528, 16.752, 16.753, and 16.754, 16.771, and 16.871 apply to such  
16 engagement. Any engagement involving an expenditure of \$3,000 or more shall be  
17 by formal contract approved by the governor. The department shall conduct a  
18 uniform cost-benefit analysis, as defined in s. 16.70 (3g), of each proposed  
19 engagement under this subsection that involves an estimated expenditure of more  
20 than \$25,000 in accordance with standards prescribed by rule of the department. The  
21 department shall review periodically, and before any renewal, the continued  
22 appropriateness of contracting pursuant to each engagement under this subsection  
23 that involves an estimated expenditure of more than \$25,000.

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

1           84.06 (2) (a) All such highway improvements shall be executed by contract  
2 based on bids unless the department finds that another method as provided in sub.  
3 (3) or (4) would be more feasible and advantageous. Bids shall be advertised for in  
4 the manner determined by the department. Except as provided in s. 84.075, the  
5 contract shall be awarded to the lowest competent and responsible bidder as  
6 determined by the department. If the bid of the lowest competent bidder is  
7 determined by the department to be in excess of the estimated reasonable value of  
8 the work or not in the public interest, all bids may be rejected. The department shall,  
9 so far as reasonable, follow uniform methods of advertising for bids and may  
10 prescribe and require uniform forms of bids and contracts. Except as provided in par.  
11 (b), the secretary shall enter into the contract on behalf of the state. Every such  
12 contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.77, 16.78 to 16.82, 16.87  
13 and 16.89, but ss. 16.528, 16.752, 16.753, and 16.754, 16.771, and 16.871 apply to the  
14 contract. Any such contract involving an expenditure of \$1,000 or more shall not be  
15 valid until approved by the governor. The secretary may require the attorney general  
16 to examine any contract and any bond submitted in connection with the contract and  
17 report on its sufficiency of form and execution. The bond required by s. 779.14 (1m)  
18 is exempt from approval by the governor and shall be subject to approval by the  
19 secretary. This subsection also applies to contracts with private contractors based  
20 on bids for maintenance under s. 84.07.

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

22           84.06 (3) **CONTRACTS WITH COUNTY OR MUNICIPALITY; DIRECT LABOR; MATERIALS.** If  
23 the department finds that it would be more feasible and advantageous to have the  
24 improvement performed by the county in which the proposed improvement is located  
25 and without bids, the department may, by arrangement with the county highway

1 committee of the county, enter into a contract satisfactory to the department to have  
2 the work done by the county forces and equipment. In such contract the department  
3 may authorize the county to purchase, deliver, and store materials and may fix the  
4 rental rates of small tools and equipment. The contract shall be between the county  
5 and the state and shall not be based on bids, and may be entered into on behalf of the  
6 county by the county highway committee and on behalf of the state by the secretary.  
7 Such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230,  
8 except ss. 16.753 and, 16.754, 16.771, and 16.871. If the total estimated  
9 indebtedness to be incurred exceeds \$5,000 the contract shall not be valid until  
10 approved by the governor. The provisions of this subsection relating to agreements  
11 between a county and the state shall also authorize and apply to such arrangements  
12 between a city, town, or a village and the state. In such cases, the governing body  
13 of the city, town, or village shall enter into the agreement on behalf of the  
14 municipality.

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

16 84.06 (4) SPECIAL CONTRACTS WITH RAILROADS AND UTILITIES. If an improvement  
17 undertaken by the department will cross or affect the property or facilities of a  
18 railroad or public utility company, the department may, upon finding that it is  
19 feasible and advantageous to the state, arrange to perform portions of the  
20 improvement work affecting such facilities or property or perform work of altering,  
21 rearranging, or relocating such facilities by contract with the railroad or public  
22 utility. Such contract shall be between the railroad company or public utility and the  
23 state and need not be based on bids. The contract may be entered into on behalf of  
24 the state by the secretary. Every such contract is exempted from s. 779.14 and from  
25 all provisions of chs. 16 and 230, except ss. 16.528, 16.752, 16.753, and 16.754,



1 16.771, and 16.871. No such contract in which the total estimated debt to be incurred  
2 exceeds \$5,000 shall be valid until approved by the governor. As used in this  
3 subsection, “public utility” means the same as in s. 196.01 (5), and includes a  
4 telecommunications carrier as defined in s. 196.01 (8m), and “railroad” means the  
5 same as in s. 195.02. “Property” as used in this subsection includes but is not limited  
6 to tracks, trestles, signals, grade crossings, rights-of-way, stations, pole lines,  
7 plants, substations, and other facilities. Nothing in this subsection shall be  
8 construed to relieve any railroad or public utility from any financial obligation,  
9 expense, duty, or responsibility otherwise provided by law relative to such property.

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

11 **85.015 Transportation assistance contracts.** All contracts entered into  
12 under this chapter to provide financial assistance in the areas of railroads, urban  
13 mass transit, specialized transportation, and harbors are subject to ss. 16.528,  
14 16.752, and 16.753, 16.771, and 16.871 but are exempt from ss. 16.70 to 16.75, 16.755  
15 to 16.77, 16.78 to 16.82, 16.85 to 16.87, and 16.875 to 16.89.

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

17 102.81 (2) The department may retain an insurance carrier or insurance  
18 service organization to process, investigate and pay claims under this section and  
19 may obtain excess or stop-loss reinsurance with an insurance carrier authorized to  
20 do business in this state in an amount that the secretary determines is necessary for  
21 the sound operation of the uninsured employers fund. In cases involving disputed  
22 claims, the department may retain an attorney to represent the interests of the  
23 uninsured employers fund and to make appearances on behalf of the uninsured  
24 employers fund in proceedings under ss. 102.16 to 102.29. Section 20.930 and all  
25 provisions of subch. IV of ch. 16, except ss. 16.753 and 16.771, do not apply to an

1 attorney hired under this subsection. The charges for the services retained under  
2 this subsection shall be paid from the appropriation under s. 20.445 (1) (rp). The cost  
3 of any reinsurance obtained under this subsection shall be paid from the  
4 appropriation under s. 20.445 (1) (sm).

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

6 **165.08 Power to compromise.** Any civil action prosecuted by the  
7 department by direction of any officer, department, board or commission, shall be  
8 compromised or discontinued when so directed by such officer, department, board or  
9 commission. Any Except as provided in s. 20.931 (7) (b), any civil action prosecuted  
10 by the department on the initiative of the attorney general, or at the request of any  
11 individual may be compromised or discontinued with the approval of the governor.  
12 In any criminal action prosecuted by the attorney general, the department shall have  
13 the same powers with reference to such action as are vested in district attorneys.

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

15 **165.25 (11) FALSE CLAIMS.** Diligently investigate possible violations of s. 20.931,  
16 and, if the department determines that a person has committed an act that is  
17 punishable under s. 20.931, may bring a civil action against that person.

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

19 **221.0903 (4) (b) *Contracts for examination services.*** The division may enter  
20 into contracts with any bank supervisory agency with concurrent jurisdiction over  
21 a state bank or an in-state branch of an out-of-state state bank to engage the  
22 services of the agency's examiners at a reasonable rate of compensation, or to provide  
23 the services of the division's examiners to the agency at a reasonable rate of  
24 compensation. Contracts entered into under this paragraph are exempt from ss.  
25 16.70 to 16.752, 16.754 to 16.76, and 16.767 to 16.77, and 16.78 to 16.82.

1           **SECTION 18.** 801.02 (1) of the statutes is amended to read:

2           801.02 (1) ~~A~~ Except as provided in s. 20.931 (5) (b), a civil action in which a  
3 personal judgment is sought is commenced as to any defendant when a summons and  
4 a complaint naming the person as defendant are filed with the court, provided service  
5 of an authenticated copy of the summons and of the complaint is made upon the  
6 defendant under this chapter within 90 days after filing.

7           **SECTION 19.** 803.09 (1) and (2) of the statutes are amended to read:

8           803.09 (1) ~~Upon~~ Except as provided in s. 20.931, upon timely motion anyone  
9 shall be permitted to intervene in an action when the movant claims an interest  
10 relating to the property or transaction which is the subject of the action and the  
11 movant is so situated that the disposition of the action may as a practical matter  
12 impair or impede the movant's ability to protect that interest, unless the movant's  
13 interest is adequately represented by existing parties.

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

23           **SECTION 20.** 804.01 (2) (intro.) of the statutes is amended to read:

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 21.** 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 22.** 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 23.** 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 9329. Initial applicability; Justice.**

22           (1) FALSE CLAIMS. The treatment of sections 16.771, 16.871, 23.41 (5), 25.18 (1)  
23 (a), (f), and (m), 66.0902. 84.01 (13), 84.06 (2) (a), (3), and (4), 85.015, 102.81 (2),  
24 221.0903 (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)