

### Fiscal Estimate - 2009 Session

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>09-4310/1</b>	<b>Introduction Number</b> <b>AB-0792</b>	
<b>Description</b> State contractual services and false claims submitted to state and local governments, requiring the exercise of rule-making authority, and providing penalties		
<b>Fiscal Effect</b>		
<b>State:</b>		
<input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate		
<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Decrease Costs	
<b>Local:</b>		
<input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate		
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts		
<b>Fund Sources Affected</b>		
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input checked="" type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS s. 20.505 (1) (kf) and 20.505(1)(kc)		
<b>Affected Ch. 20 Appropriations</b>		
<b>Agency/Prepared By</b>	<b>Authorized Signature</b>	<b>Date</b>
DOA/ Cathleen Connolly (608) 261-2292	Martha Kerner (608) 266-1359	3/9/2010

## Fiscal Estimate Narratives

DOA 3/9/2010

LRB Number	<b>09-4310/1</b>	Introduction Number	<b>AB-0792</b>	Estimate Type	<b>Original</b>
<b>Description</b> State contractual services and false claims submitted to state and local governments, requiring the exercise of rule-making authority, and providing penalties					

### Assumptions Used in Arriving at Fiscal Estimate

Assembly Bill (AB) 792 makes changes to state statutes in regard to state contractual services and contracting. The Department of Administration's (DOA) fiscal estimate addresses only state contractual services and contracting entered into under Chapter 16.

The bill establishes many new requirements but does not authorize the additional FTE positions necessary to perform all the new requirements. While the ramifications of AB 792 are statewide, the costs in this fiscal estimate pertain to DOA only.

Sections 1 and 2 of relate to biennial budget reporting. Section 1 requires state agencies to include information on contractors and contracting in their agency biennial budget requests on September 15th of each even numbered year. This information includes: the total number of contracted positions, the appropriations the services are being paid from, and the base level funding being used and requested for contracted services. Section 2 requires the State Budget Office (SBO) to compile this information into the Governor's budget request the following calendar year. Not all state agencies currently collect this data and there is currently no central repository for it. State agencies will incur increased costs associated with developing a system to compile and report the new data requirements. The actual cost and additional FTE to comply with this provision will vary among agencies.

Sections 3 and 4 modify s. 16.705 so that at least two of three conditions relating to expertise and efficiency must be met in order to contract for services. There is no fiscal effect based on modifying this requirement. In addition, Section 4 specifies that contracts may not be automatically renewed. While it is unknown what or how business or service delivery areas may be affected, this provision could create service interruptions and result in adverse fiscal impacts. The State Bureau of Procurement (SBOP) has a formal contract analysis/renewal process; therefore, this change will have no fiscal impact on contracts managed by the SBOP. However, other agencies do utilize automatic renewals. Those agencies will experience an indeterminable additional workload associated with establishing a formal contract review/renewal process.

Section 5 outlines in statute specific items that should be compared in a cost benefit analysis (CBA). These items are already included in the SBOP's instructions, forms and calculations, so there is no fiscal effect.

Section 6 directs each agency to perform periodic audits on cost-benefit analyses or continued appropriateness (CA) reviews and contracts. For the CBAs, CAs, and contracts prepared by DOA, DOA staff can absorb any additional workload associated with the performance of periodic audits.

Section 7 requires that the DOA Secretary, prior to the award of any contract, review contracts for contractual services to ensure that agencies are following current requirements, they properly utilize the services of state employees, evaluate the feasibility of using limited term employees instead of contract employees, and do not enter into any contract for services that conflict with any bargaining agreement. DOA does not currently perform this function and could not absorb the work with existing staff resources. In FY09, there were a total of 752 CBAs and CAs completed statewide under Chapter 16 purchasing authority. To review a similar number of contracts, the Department estimates that it would need an additional 2.0 FTE. The cost of these positions is itemized below:

Contract Specialist Senior (2 staff @ \$22.40 p/hr @ 2080 hrs) = \$93,200

Fringe Benefits @ 39.88% = \$37,200

Supplies and Services @ \$11,300 per FTE = \$22,600

Total = \$153,000

Section 8 codifies in statute appeal periods that currently are addressed in Wisconsin Administrative Code

Chapter Adm. 10.15. The bill language lengthens the appeal periods and modifies the definition of the aggrieved from "any bidder or proposer or labor organization or organizations representing the appropriate certified state collective bargaining unit or units who is aggrieved in connection with a solicitation..." to "any person submitting a bid or proposal, or a labor organization that is certified under subch.V of ch. 111 to be the representative of the appropriate collective bargaining unit that is aggrieved by a solicitation for bides or by a letter of intent to contract."

This provision will delay the ability of the SBOP and agencies to enter into contracts by two business days. Current state terms and conditions require vendors submitting a bid or RFP to hold pricing for 90 days to allow for state agencies to complete the award and contracting process. Contracts delayed beyond the 90 day window due to increased protest/appeal time periods could result in increased costs to the State.

Section 9 directs DOA's Division of Legal Services to promulgate rules regarding the recovery of agency expenses for contractual services; to develop standard performance measures and benchmark indicators with which to rate and evaluate contractors; and to promulgate rules regarding signing bonuses, reimbursements, and per diem costs included in all contracts for contractual services. The Division can absorb this workload. However, meaningful performance measures and benchmark indicators for the evaluation of contractors are very programmatically dependent. This provision will require the Division to determine those specific programmatic needs in each agency that procures services pursuant to Chapter 16. The Division anticipates having to devote 2.0 FTE attorney positions to this effort, which would divert those positions from other work.

In addition, Section 9 directs that no payment can be made on contracts over \$25,000 that exceed the original bid by more than 10% unless the DOA Secretary approves the payment using only information provided by the agency for which the contractual services are performed. Additionally, the DOA Secretary must provide, in writing, to the Joint Committee on Finance the rationale for the approval. DOA currently does not have the ability to collect and monitor this information statewide.

State agencies currently use multiple procurement and payables systems. DOA utilizes the Purchase Plus system for purchasing and payment approval. In order to implement the provisions of Section 9 within DOA, it is anticipated that DOA would modify the Purchase Plus system to flag payments that exceed the purchase order or original bid amount by more than 10%. DOA's Division of Enterprise Technology (DET) estimates that approximately 250 programmer hours would be needed at an estimated hourly rate of \$78.00 per hour.

Purchase Plus modifications (250 hours @ \$78/hr) = \$19,500

Regarding the approval of payments on contracts over \$25,000 that exceed the original bid amount by more than 10% in other agencies, and assuming DOA relies only on the information provided by the other agencies and no other verification is required, implementation of this provision by DOA could be absorbed by existing staff.

Sections 10 through 12 state that unsatisfactory agency evaluations of contractors would need to be done based on the new benchmarks and performance standards developed by DOA's Division of Legal Services and that contracts could not be renewed until evaluations were completed. The SBOP would assist the Division in developing standards and benchmarks for vendor performance. However, the SBOP would have to maintain a disqualified vendor list and develop a process to monitor agency vendor spend to ensure that agencies do not contract with vendors on this list. An additional 0.5 FTE will be required to monitor state agency compliance with this new provision.

Procurement Specialist - Obj. (0.5 staff @ \$29.18 p/hr x 2080 hours) = \$30,300

Fringe Benefits @ 39.88% = \$12,100

Supplies & Services @ \$11,300 per FTE = \$11,300

Total = \$53,700

Section 14 states that unless an exemption is sought and granted by the Joint Committee on Finance through the passive review process, state agencies would be unable to hire contractors in fiscal years when state employees are required to serve unpaid leaves of absence or in any fiscal year when an agency in the executive branch is prohibited from hiring employees to fill vacant positions. Exemptions are listed for the use of federal stimulus funds and if a CBA shows it is more efficient to use a contractor. While it is unknown what or how business or service delivery areas may be affected, this provision could result in service interruptions and result in adverse fiscal impacts.

Section 15 states that the contracting agency shall electronically send notifications to bidders. As this is current practice, there is no fiscal impact.

Sections 16, 17 and 18 change current law which requires that state bidding, solicitation of competitive sealed proposals, and private purchases be preceded by the publication of a Class 2 notice or a posting on the Internet. The bill continues the requirement that these actions be posted on the Internet but provides that the publication of a Class 2 notice is discretionary. The Department does not anticipate a fiscal impact for these provisions.

Sections 19, 21, and 22 relate to forfeitures and fines that could be imposed by the State in cases where false claims are made under contracts. The breadth of the language on this topic, as well as debaring companies from working on state contracts, has the potential to be very costly. The impact of these provisions will be on the Department of Justice and agency legal staff.

Section 20 relates to the exemption under s. 16.705, Stats., for preparing CBAs and approving and monitoring contracts when contracting for engineering or architectural services. AB 792 removes the exemption and requires the State to conduct a CBA when contracting for engineering or architectural services.

DOA's Division of State Facilities (DSF) contracts with architects and engineers to design new buildings and remodel existing state owned buildings. Based on a review of 2006, 2007, 2008, and 2009 architect and engineer contracts, on average 360 architect or engineer selections and hires are made each year which would be subject to the preparation of a CBA. In FY09, there were a total of 752 CBAs and CAs completed statewide under Chapter 16 purchasing authority. Therefore, AB 792 bill would increase that number by almost 50%.

The Department estimates that it would take on average six hours in contract officer time and five hours of architect/engineer time per CBA or CA. Using 1685 hours as the total number of working hours (i.e., less time for sick leave, vacation, holidays, training, etc.), DOA would require 1.0 FTE contract officer and 1.0 FTE architect or engineer as itemized below:

Enterprise Contract Officer (1 staff \$28.48/hr @ 2080 hours) = \$59,200  
Architect/Engineer Management (1 staff @ \$28.48/hr @ 2080 hours) = \$59,200  
Fringe Benefits @ 39.88% = \$47,200  
Supplies and Services @ \$11,300 per FTE = \$22,600

Total = \$188,200

The Division of State Facilities estimates that use of the CBA process to contract with architects and engineers to design projects will create a delay in the award of construction contracts an average of 30 days. Generally, construction costs increase an average of 5% per year. The Division of State Facilities enters into construction contracts totaling between \$350 million and \$400 million each year. Assuming that construction costs continue to increase 5% per year, a one month delay on each of those contracts could result in increased costs of approximately \$1.5 million.

Section 27 relates to forfeitures and fines that could be imposed by local units of government in cases where false claims are made under contracts. While the bill language may augment current contract language and give municipalities' greater authority to recoup damages and forfeitures when contract terms have been violated, it is not possible to identify the number or amount of forfeitures that may be collected under this section.

### **Long-Range Fiscal Implications**

Unknown.

## Fiscal Estimate Worksheet - 2009 Session

Detailed Estimate of Annual Fiscal Effect

Original     
  Updated     
  Corrected     
  Supplemental

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<b>Description</b> State contractual services and false claims submitted to state and local governments, requiring the exercise of rule-making authority, and providing penalties			
<b>I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):</b>  \$19,500 for one-time IT system costs.			
<b>II. Annualized Costs:</b>		<b>Annualized Fiscal Impact on funds from:</b>	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
	State Operations - Salaries and Fringes	\$338,400	\$
	(FTE Position Changes)	(4.5 FTE)	
	State Operations - Other Costs	56,500	
	Local Assistance		
	Aids to Individuals or Organizations		
	<b>TOTAL State Costs by Category</b>	<b>\$394,900</b>	<b>\$</b>
<b>B. State Costs by Source of Funds</b>			
	GPR		
	FED		
	PRO/PRS (PRS)	394,900	
	SEG/SEG-S		
<b>III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b>			
		Increased Rev	Decreased Rev
	GPR Taxes	\$	\$
	GPR Earned		
	FED		
	PRO/PRS		
	SEG/SEG-S		
	<b>TOTAL State Revenues</b>	<b>\$</b>	<b>\$</b>
<b>NET ANNUALIZED FISCAL IMPACT</b>			
		State	Local
NET CHANGE IN COSTS		\$394,900	\$
NET CHANGE IN REVENUE		\$	\$
<b>Agency/Prepared By</b> <b>Authorized Signature</b> <b>Date</b>			
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