



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Assembly Bill 792

**Assembly Substitute
Amendment 2, as Amended**

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2009 Assembly Bill 792 relates to state contractual services and false claims submitted to state and local governments. The following describes the changes made to Assembly Bill 792 by Assembly Substitute Amendment 1:

- **Current law** generally requires a cost-benefit analysis for estimated expenditures of more than \$25,000. **Assembly Substitute Amendment 2** increases the \$25,000 threshold to \$50,000, thus requiring a cost-benefit analysis for estimated expenditures of more than \$50,000.
- **Assembly Bill 792** provides exemptions from the requirement for a cost-benefit analysis. **Assembly Substitute Amendment 2** adds another exemption for services that are substantially dissimilar to services performed by state employees or that state employees have not performed historically. If an agency is exempt under this provision, the Department of Administration (DOA) must report the services that the agency determined were exempt.
- **Current law** requires that the Director of the Office of State Employment Relations (OSER) review contracts to ensure that agencies properly utilize the services of state employees, evaluate the feasibility of using limited term appointments, and do not enter into a contract that conflicts with a collective bargaining agreement. **Assembly Bill 792** transfers this authority from the OSER director to DOA. **Assembly Substitute Amendment 2** reverses this, and the authority remains with the OSER director.
- **Assembly Bill 792** provides that if the cost of contractual services exceeds \$25,000, any expenditures that exceed the original bid by 10% or more may not be paid unless the DOA secretary approves payment and provides, in writing, to the Joint Committee on Finance his or her rationale for the approval. **Assembly Substitute Amendment 2** provides, instead, that such excess may not be paid unless the agency notifies the Governor and the Joint Committee on Finance of the increase and the reason for the increase.

- **Assembly Bill 792** provides a penalty for anyone who knowingly presents or causes to be presented a false claim for payment under a contract or order. **Assembly Substitute Amendment 2** provides that this provision only applies to contracts or orders that are subject to s. 16.705, Stats., and contracts or orders entered into for projects that are subject to certain prevailing wage laws.
- **Assembly Substitute Amendment 2** exempts certain contracts from the false claim provisions in Assembly Bill 792.
- **Assembly Bill 792** provides that a contract for engineering services or architectural services for the state or a department, board, commission, or officer of the state is exempt from certain contracting requirements. **Assembly Substitute Amendment 2** exempts these contracts from additional contracting requirements and provides that an engineer or architect employed at DOA must determine if the project could be completed more effectively and efficiently with state employees.
- **Assembly Bill 792** generally provides that any person may bring a civil action for a false claim as a *qui tam* plaintiff. **Assembly Substitute Amendment 2** provides that a private person may not bring a civil action if the action is based on public disclosure of allegations or transactions in a criminal action; in a legislative, administrative, or other governmental report, hearing, audit, or investigation; or from news media, unless the private person has direct and independent knowledge and has voluntarily provided that knowledge to the Attorney General.
- **Assembly Substitute Amendment 2** provides that the Department of Transportation (DOT) is not required to submit any proposed contractual engagement of certain services to, or obtain approval of any such engagement of such services from, DOA. Further, under the substitute amendment, DOA has no oversight authority over such engagement of services.
- **Assembly Bill 792** provides that on or before October 15 of each year, DOT must submit to the Governor, Joint Committee on Finance, Joint Committee on Audit, Senate Chief Clerk, and Assembly Chief Clerk a report concerning the number, value, and nature of certain contracts authorized during the preceding fiscal year. **Assembly Substitute Amendment 2** provides that this report may be combined with a similar report required to be submitted by DOA.
- **Assembly Bill 792** requires that DOT use its employees to conduct all tests of concrete thickness on its highway projects. **Assembly Substitute Amendment 2** deletes this provision.
- **Assembly Substitute Amendment 2** requires that DOT promulgate rules establishing a methodology to determine the percentage of work that DOT may outsource to persons not employed by DOT. The rules must set forth a process by which DOT could attain staffing levels sufficiently proficient to ensure that not more than 50% of work is outsourced to persons not employed by DOT.

- *Assembly Substitute Amendment 2* requires that DOT submit a report to the Legislature no later than February 1, 2011, on the work that DOT has outsourced to persons not employed by DOT during the previous three fiscal years.

Legislative History

Assembly Substitute Amendment 2 was offered by Representative Jorgensen, and Assembly Amendments 1 and 2 to Assembly Substitute Amendment 2 were offered by the Joint Committee on Finance. On April 19, 2010, the Joint Committee on Finance recommended adoption of Assembly Amendment 1 to Assembly Substitute Amendment 2 on a vote of Ayes, 11; Noes, 4; Assembly Amendment 2 to Assembly Substitute Amendment 2 on a vote of Ayes, 15; Noes, 0; and Assembly Substitute Amendment 2, as amended, on a vote of Ayes, 12; Noes, 3. The Joint Committee on Finance then recommended passage of Assembly Bill 792, as amended, on a vote of Ayes, 10; Noes, 5.

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