



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Senate Bill 447

Senate Amendments 1 and 2

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Senate Amendment 1 makes the following changes to Senate Bill 447:

1. The bill provides that each agency preparing a cost-benefit analysis or continued appropriateness review must submit the analysis or review to the Department of Administration (DOA) for certification of accuracy. The bill also provides that a cost-benefit analysis or continued appropriateness review is not required for services that a state employee may not or does not perform. The amendment eliminates the DOA certification requirement and instead requires that the agency preparing the analysis or review itself perform periodic audits on cost-benefit analyses or continued appropriateness reviews and contracts that required a cost-benefit analysis or continued appropriateness review. The amendment also provides that a cost-benefit analysis or continued appropriateness review will be required regardless of whether a state employee may not or does not perform the services in the proposed contract. [See items 1. to 4. of the amendment.]

2. The bill requires the Office of State Employment Relations (OSER) to notify all representatives of interested collective bargaining units of proposed state contractual services by providing the units with a copy of all documents soliciting bids or proposals. Also, the OSER director, after the issuance of a letter of intent to contract, under conditions established by DOA rule, must review contracts in order to ensure that agencies have notified all representatives of interested collective bargaining units. The amendment deletes these requirements and also provides that, with respect to current law, DOA, rather than the OSER director, prior to the award of contracts for contractual services will review the contracts in order to ensure that agencies: (a) properly utilize the services of state employees; (b) evaluate the feasibility of using limited term appointments prior to entering into a contract for contractual services; and (c) do not enter into a contract for contractual services in conflict with any collective bargaining agreement. [See item 5. of the amendment.]

3. The bill provides that any representative of an interested collective bargaining unit representing state employees that is aggrieved by a solicitation for bids, or by a letter of intent to contract for, contractual services may protest to the agency that solicited or awarded the contractual services. The written notice of intent to protest and the actual protest must be written. The amendment alters the language regarding a union protest by providing that only a labor organization certified to be

the representative of the appropriate state collective bargaining unit that is aggrieved by a solicitation or by a letter of intent to contract may protest. Also, the amendment provides that the notice of intent and the actual protest may be made electronically. [See items 6. to 8. of the amendment.]

4. The bill provides that the division of legal services within DOA must promulgate rules on various matters. The amendment provides that the division also must promulgate rules regarding signing bonuses, reimbursements, and per diem costs included in all contracts for contractual services. [See item 9. of the amendment.]

5. The bill provides that if the cost of contractual services exceeds \$25,000, any expenditures of the person performing the contractual services that exceed its original bid by 10% or more may not be paid unless the DOA secretary approves payment of the increased amount and provides, in writing, to the Joint Committee on Finance his or her rationale for the approval. The amendment provides that the secretary will make this decision using only information provided by the agency for which the contractual services are performed. [See item 10. of the amendment.]

6. Current law generally provides 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 amendment continues the requirement that these actions be posted on the Internet but provides that the publication of a Class 2 notice is discretionary. [See item 11. of the amendment.]

7. Current law exempts the state in general (when contracting for engineering or architectural services) and the Department of Transportation (DOT) (when contracting for engineering, consulting, surveying, or other specialized services or contracting for highway improvements) from the requirements of s. 16.705, Stats., relating to the preparation of cost-benefit analyses and approving and monitoring contracts for services. The amendment removes the exemptions and applies s. 16.705, Stats., to the state and specifically to DOT. [See items 12. and 28. to 30. of the amendment.]

8. The amendment newly provides that, on or before October 15 of each year, DOT must submit to the Governor, the Joint Committee on Finance, the Joint Legislative Audit Committee, and the chief clerk of each house of the Legislature for distribution to the appropriate standing committees, a report concerning the number, value, and nature of contractual engagements of engineering, consulting, surveying, or other specialized services during the preceding fiscal year. The report also must include a summary of the cost-benefit analyses completed in compliance with DOT rules and include recommendations for elimination of unneeded contractual engagements of services and for consolidation or resolicitation of existing contractual engagements of services. [See item 31. of the amendment.]

9. Current law provides that DOT must conduct all tests of concrete thickness on highway improvements within its jurisdiction. The amendment specifies that DOT must use department employees to conduct all tests of concrete thickness on its highway projects. [See items 32. to 34. of the amendment.]

10. The bill imposes forfeitures upon persons making false claims for payment under contracts for the provision of various goods and services. The bill also provides a procedure for public and private prosecution of these matters. A private prosecution will be in the name of the state and will provide a pecuniary incentive to the person bringing the lawsuit. The amendment exempts the State of Wisconsin Investment Board from these provisions as they relate to certain investment contracts entered into by the board. [See items 13. to 27. of the amendment.]

Senate Amendment 2 directs DOT to make all reasonable efforts to ensure that by January 1, 2012, not more than 50% of the department's work, other than highway maintenance work, is

outsourced to persons not employed by the department. By January 1, 2014, the department is directed to outsource not more than 30% of this work.

Legislative History

On February 10, 2010, the Senate Committee on Ethics Reform and Government Operations introduced and adopted Senate Amendments 1 and 2 to Senate Bill 447 and recommended passage of the bill, as amended, all on votes of Ayes, 5; Noes, 0.

RS:jal