

2011 DRAFTING REQUEST

Bill

Received: 02/09/2012

Received By: **chanaman**

Wanted: **As time permits**

Companion to LRB:

For: **Julie Lassa (608) 266-3123**

By/Representing: **Danielle**

May Contact:

Drafter: **chanaman**

Subject: **State Govt - procurement**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lassa@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

False claims

Instructions:

See attached-- 09s0345 pieces

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 02/09/2012	mduchek 02/23/2012		_____			S&L
/1			rschluet 02/24/2012	_____	lparisi 02/24/2012	sbasford 03/12/2012	

FE Sent For:

<END>

↳ At Intro.

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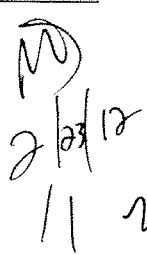

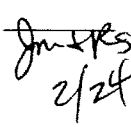
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/?	chanaman						

FE Sent For: <END>



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-4058/1
CMH.....

TODAY if possible
Thurs (cont) FRIDAY

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

FWF

1 Gen AN ACT Gen... relating to: false claims against the state or a local government and providing penalties

Analysis by the Legislative Reference Bureau

~~Currently~~, if a contractor or vendor does business with this state or a local government, 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 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 be prosecuted for false swearing. Currently, except with regard to medical assistance, a private person has no means 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 a false claim under any contract or order for materials, supplies, equipment, or 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 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 contains similar provisions that apply to local governmental units. The bill creates separate prohibitions against state contractors, grantees, vendors, and other recipients of state resources who knowingly commit

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three times
 certain 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 of not less than \$5,000 nor more than \$10,000 for each violation. 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 to all relief to make the employee whole if the employee is discriminated against by an employer as a result of lawful actions the employee took to further the investigation of any act of fraud, as defined in the bill, the employer committed against the state. 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.

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

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 2 84.01 (13) ENGINEERING SERVICES. The department may engage such
 3 engineering, consulting, surveying, or other specialized services as it deems
 4 advisable. Any engagement of services under this subsection is exempt from ss.
 5 16.70 to 16.75, 16.755 to 16.82, and 16.85 to 16.89, but ss. 16.528, 16.752, 16.753, and
 6 16.754 apply to such engagement. Section 20.932 does not apply to any engagement
 7 of services under this subsection. Any engagement involving an expenditure of
 8 \$3,000 or more shall be by formal contract approved by the governor. The department
 9 shall conduct a uniform cost-benefit analysis, as defined in s. 16.70 (3g), of each
 10 proposed engagement under this subsection that involves an estimated expenditure
 11 of more than \$25,000 in accordance with standards prescribed by rule of the
 12 department. The department shall review periodically, and before any renewal, the

1 continued appropriateness of contracting pursuant to each engagement under this
 2 subsection that involves an estimated expenditure of more than \$25,000.

3 ~~Cross-reference: Cross-reference: Cross-reference:~~ See also ch. Trans 515, Wis. adm. code. ~~Cross-reference:~~
 History: 1971 c. 40, 125; 1973 c. 12; 1973 c. 243 s. 82; 1975 c. 189; 1977 c. 29 ss. 918 to 924, 1654 (1), (8) (a), (f), 1656 (43); 1977 c. 190, 272; 1979 c. 221, 314; 1981
 c. 346 s. 38; 1983 a. 27, 130; 1985 a. 29, 300; 1987 a. 27; 1989 a. 31, 125, 345; 1993 a. 246; 1995 a. 225, 338; 1997 a. 27, 106; 1999 a. 9; 2001 a. 16; 2005 a. 25, 89, 392, 410;
 2007 a. 20, 97, 125; 2009 a. 28; 2011 a. 32.

(END)

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1 ~~least 7 days after the date of the last insertion of the notice or~~ at least 7 days after
2 the date of posting on the Internet.

3 **SECTION 18.** 16.75 (6) (c) of the statutes is amended to read:

4 16.75 (6) (c) If the secretary determines that it is in the best interest of this state
5 to do so, he or she may, with the approval of the governor, waive the requirements
6 of subs. (1) to (5) and may purchase supplies, material, equipment, or contractual
7 services, other than printing and stationery, from a private source other than a
8 source specified in par. (b). Except as provided in sub. (2g) (c), if the cost of the
9 purchase is expected to exceed \$25,000, the department ~~shall~~ may first publish a
10 class 2 notice under ch. 985 ~~or~~ and shall post a notice on the Internet at the site
11 determined or approved by the department under sub. (1) (b) describing the
12 materials, supplies, equipment, or contractual services to be purchased, stating the
13 intent to make the purchase from a private source without soliciting bids or
14 competitive sealed proposals and stating the date on which the contract or purchase
15 order will be awarded. The date of the award shall be at least 7 days after ~~the date~~
16 ~~of the last insertion or the date of posting on the Internet.~~

17 **SECTION 19.** 16.771 of the statutes is created to read:

18 **16.771 False claims. (1)** In this section, "contract" means any of the
19 following:

20 (a) Contracts or orders that are subject to s. 16.705.

21 (b) Contracts or orders entered into for projects that are subject to s. 103.49 or
22 103.50 if the party presenting the false claim is alleged to have failed to comply with
23 s. 103.49 or 103.50.

24 (2) Whoever knowingly presents or causes to be presented a false claim for
25 payment under a contract for materials, supplies, equipment, or services to be

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1 provided to an agency shall forfeit not less than \$5,000 nor more than \$10,000, plus
2 3 times the amount of the damages that were sustained by the state or would have
3 been sustained by the state, whichever is greater, as a result of the false claim. The
4 attorney general may bring an action on behalf of the state to recover any forfeiture
5 incurred under this section.

6 **SECTION 20.** 16.87 (2) of the statutes is renumbered 16.87 (2) (a) and amended
7 to read:

8 ~~16.87 (2) (a) A contract for engineering services or architectural services or a
9 to be done for or furnished to the state or a department, board, commission, or officer
10 of the state is exempt from the requirements of ss. 16.75 and 16.705, but an engineer
11 or an architect employed at the department shall determine if the project could be
12 completed more effectively and efficiently with state employees before a contract
13 may be approved under sub. (3).~~

14 ~~(b) A contract involving an expenditure of \$10,000 or more for construction
15 work, or \$30,000 or more for limited trades work, to be done for or furnished to the
16 state or a department, board, commission, or officer of the state is exempt from the
17 requirements of ss. 16.705 and 16.75.~~

18 ~~(c) The department shall attempt to ensure that 5% of the total amount
19 expended under this section in each fiscal year is paid to minority businesses, as
20 defined under s. 16.75 (3m) (a).~~

21 **SECTION 21.** 16.87^v1 of the statutes is created to read:

22 **16.871 False claims. (1)** In this section:

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

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

25 (bm) "Contract" has the meaning given in s. 16.771 (1). ✓

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

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

9 SECTION 22. 20.932 of the statutes is created to read:

10 **20.932 False claims; actions by or on behalf of state.** (1) In this section:

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

12 (b) "Claim" includes any request or demand for money, property, or services
13 made to any officer, employee, or agent of this state, or to any contractor, grantee, or
14 other recipient, whether or not under contract, if any portion of the money, property,
15 or services that are requested or demanded is derived from state resources, or if the
16 state is obligated to reimburse the contractor, grantee, or other recipient for any
17 portion of the money, property, or services that are requested or demanded. "Claim"
18 does not include any request or demand for medical assistance described under s.
19 20.931 (1) (b).

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

21 (d) "Knowingly" has the meaning given in s. 20.931 (1) (d).

22 (e) "Proceeds" has the meaning given in s. 20.931 (1) (e).

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

24 (2) Except as provided in subs. (3) and (4), any person who does any of the
25 following is liable to this state for 3 times the amount of the damages sustained by

as provided under subs (3)

1 this state because of the actions of the person) and shall forfeit not less than \$5,000
2 nor more than \$10,000 for each violation:

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

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

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

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

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

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

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

24 (h) Is a beneficiary of the submission of a false claim to any officer, employee,
25 or agent of this state, or to any contractor, grantee, or other recipient of state

1 resources, knows that the claim is false, and fails to disclose the false claim to this
2 state within a reasonable time after the person becomes aware that the claim is false.

3 (3) Except as provided in sub. (4), the court may assess against a person who
4 violates sub. (2) not less than 2 nor more than 3 times the amount of the damages
5 sustained by the state because of the acts of the person, and may not assess any
6 forfeiture if the court finds all of the following: *Q.S. 91 (B) (3m) The court*

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

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

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

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

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

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

1 the attorney general of the complaint, evidence, and information under this
2 paragraph, the attorney general may intervene in the action.

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

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

8 1. Proceed with the action or an alternate remedy under sub. (10), in which case
9 the state shall prosecute the action or proceeding under sub. (10).

10 2. Notify the court that he or she declines to proceed with the action, in which
11 case the action may not proceed.

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

15 (f) In any action or other proceeding under sub. (10) brought under this
16 subsection, all essential elements of the cause of action or complaint, including
17 damages, must be proven by a preponderance of the evidence.

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

23 (7) (a) The state may move to dismiss an action under sub. (5) or an
24 administrative proceeding under sub. (10) to which the state is a party for good cause
25 shown, notwithstanding objection of the person bringing the action, if that person is

1 served with a copy of the state's motion and is provided with an opportunity to oppose
2 the motion before the court or the administrative agency before which the proceeding
3 is conducted.

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

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

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

24 (d) Upon showing by a defendant that unrestricted participation in the
25 prosecution of an action under sub. (5) or alternate proceeding under sub. (10) to

1 which the state is a party by the person bringing the action would result in
2 harassment or would cause the defendant undue burden or unnecessary expense, the
3 court may limit the person's participation in the prosecution.

4 (9) Upon showing in camera by the attorney general that discovery by the
5 person bringing the action would interfere with the state's ongoing investigation or
6 prosecution of a criminal or civil matter arising out of the same facts as the facts upon
7 which the action is based, the court may stay the discovery in whole or in part for not
8 more than 60 days. The court may extend the stay upon further showing in camera
9 by the attorney general that the state has pursued the criminal or civil investigation
10 of the matter with reasonable diligence and the proposed discovery in the action
11 brought under sub. (5) will interfere with the ongoing criminal or civil investigation
12 or prosecution.

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

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

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

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

22 (d) Whether the state proceeds with the action or an alternate proceeding under
23 sub. (10), if the court or other adjudicator finds that the person who brought an action
24 under sub. (5) also planned or initiated the violation upon which the action or
25 proceeding is based, then the court may, to the extent that the court considers

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

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

any of the following applies: 1,
and is

12 ~~(a)~~ No court has jurisdiction over an action brought by a private person under
 13 sub. (5) ^{2.} if the action is based on public disclosure of allegations or transactions in a
 14 criminal action; in a legislative, administrative, or other governmental report,
 15 hearing, audit, or investigation; or from news media, unless the private person has
 16 direct and independent knowledge of the information on which the allegations or
 17 transactions are based and has voluntarily provided the knowledge to the attorney
 18 general under sub. (5) (b).

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

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

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

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

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

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

22 **(18)** This section shall be liberally construed and applied to promote the public
23 interest and to effect the congressional intent in enacting 31 USC 3729 to 3733, as
24 reflected in the act and the legislative history of the act.

25 **SECTION 23.** 25.18 (1) (a) of the statutes is amended to read:

1 25.18 (1) (a) Notwithstanding s. 20.930 and all provisions of subch. IV of ch.
2 16, except s. 16.753, employ special legal or investment counsel in any matters
3 arising out of the scope of its investment authority. ~~Section~~ Sections 16.753 ~~does,~~
4 16.771, 16.871, and 20.932 do not apply to the employment of legal or investment
5 counsel for the purpose of assisting the board with investments or arising out of the
6 scope of the board's investment authority. The employment of special legal counsel
7 shall be with the advice and consent of the attorney general whenever such special
8 counsel is to be compensated by the board. Any expense of counsel so employed shall
9 be borne by the fund for which the services shall be furnished.

10 **SECTION 24.** 25.18 (1) (f) of the statutes is amended to read:

11 25.18 (1) (f) Maintain and repair any building or other structure or premises
12 which it owns in fee or in which it owns the beneficial interest and, notwithstanding
13 all provisions of subch. IV or V of ch. 16, except s. 16.753, it shall have exclusive
14 authority to make such agreements and enter into such contracts as it deems
15 necessary for such purpose. ~~Section~~ Sections 16.753 ~~does,~~ 16.771, 16.871, and 20.932
16 do not apply to agreements and contracts entered into by the board for the purpose
17 of assisting the board with investments or arising out of the scope of the board's
18 investment authority. All noncapital costs under this paragraph shall be charged to
19 the current income accounts of the funds having an interest in the building, structure
20 or premises.

21 **SECTION 25.** 25.18 (1) (m) of the statutes is amended to read:

22 25.18 (1) (m) Notwithstanding all provisions of subchs. IV and V of ch. 16,
23 except s. 16.753, employ professionals, contractors or other agents necessary to
24 evaluate or operate any property if a fund managed by the board has an interest in,
25 or is considering purchasing or lending money based upon the value of, that property.

1 ~~Section Sections~~ 16.753 ~~does, 16.771, 16.871, and 20.932~~ do not apply to the
2 employment of any person for the purpose of assisting the board with investments
3 or arising out of the scope of the board's investment authority. Costs under this
4 paragraph shall be paid by the fund and charged to the appropriate account under
5 s. 40.04 (3).

6 **SECTION 26.** 66.0902 of the statutes is created to read:

7 **66.0902 False claims. (1) DEFINITIONS.** In this section:

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

9 (b) "Public contract" means a contract that is subject to s. 66.0903 and that is
10 for the construction, execution, repair, remodeling, or improvement of a public work
11 or building or for the furnishing of supplies, equipment, material, or professional or
12 contractual services of any kind.

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

19 **SECTION 27.** 84.01 (13) of the statutes is amended to read:

20 **84.01 (13) ENGINEERING SERVICES.** The department may engage such
21 engineering, consulting, surveying, or other specialized services as it deems
22 advisable. Any engagement of services under this subsection is exempt from ss.
23 ~~16.70 to 16.75~~ 16.7015, 16.705 (4), 16.71 to 16.751, 16.755 to 16.82, and 16.85 to
24 16.89, but ss. 16.42, 16.46, 16.528, 16.705 except s. 16.705 (4), 16.752, 16.753, and
25 16.754 apply to such engagement. Section 20.932 does not apply to any engagement

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1 of services under this subsection. Any engagement involving an expenditure of
2 \$3,000 or more shall be by formal contract approved by the governor. The
3 department shall conduct a uniform cost-benefit analysis, as defined in s. 16.70 (3g),
4 of each proposed engagement under this subsection that involves an estimated
5 expenditure of more than ~~\$25,000~~ \$50,000 in accordance with standards prescribed
6 by rule of the department. The department shall review periodically, and before any
7 renewal, the continued appropriateness of contracting pursuant to each engagement
8 under this subsection that involves an estimated expenditure of more than ~~\$25,000~~
9 \$50,000. Notwithstanding any provision of s. 16.705 or rule promulgated under s.
10 16.705, the department of transportation is not required to submit any proposed
11 contractual engagement of services to, or obtain approval of any such engagement
12 of services from, the department of administration before engaging any services
13 under this subsection and the department of administration has no oversight
14 authority over any such engagement of services under this subsection.
15 Notwithstanding s. 16.705 (2), the department of transportation, rather than the
16 department of administration, shall, before engaging any services under this
17 subsection, satisfy itself that the justification for engaging such services conforms to
18 the requirements of ss. 16.705, 16.752, 16.753, and 16.754, and the written
19 justification required under s. 16.705 (2) shall be submitted to the department of
20 transportation rather than the department of administration.

21 **SECTION 28.** 84.01 (13m) of the statutes is created to read:

22 84.01 (13m) CONTRACTUAL ENGAGEMENTS OF SERVICES REPORTING. On or before
23 October 15 of each year, the department shall submit to the governor, the joint
24 committee on finance, the joint legislative audit committee, and the chief clerk of
25 each house of the legislature for distribution to the appropriate standing committees

1 under s. 13.172 (3) a report concerning the number, value, and nature of contractual
2 engagements of services authorized under sub. (13) during the preceding fiscal year.
3 To the extent possible, the report required under this subsection may be combined
4 with the report required under s. 16.705 (8). The report shall also include, with
5 respect to contractual engagements of services for the preceding fiscal year, all of the
6 following:

7 (a) A summary of the cost-benefit analyses completed in compliance with rules
8 promulgated by the department.

9 (b) Recommendations for elimination of unneeded contractual engagements of
10 services and for consolidation or resolicitation of existing contractual engagements
11 of services.

12 **SECTION 29.** 84.01 (31) of the statutes is amended to read:

13 **84.01 (31) ACCOMMODATION OF UTILITY FACILITIES WITHIN HIGHWAY RIGHTS-OF-WAY.**
14 Notwithstanding ss. 84.06 (4), 84.063, 84.065, and 84.093, the department may, upon
15 finding that it is feasible and advantageous to the state, negotiate and enter into an
16 agreement to accept any plant or equipment used for the conveyance, by wire, optics,
17 radio signal, or other means, of voice, data, or other information at any frequency
18 over any part of the electromagnetic spectrum, or to accept any services associated
19 with the collection, storage, forwarding, switching, and delivery incidental to such
20 communication, as payment for the accommodation of a utility facility, as defined in
21 s. 84.063 (1) (b), within a highway right-of-way. Any agreement under this
22 subsection is exempt from ss. 16.70 to 16.75, 16.755 to 16.82, and 16.85 to 16.89, but
23 ss. 16.528, 16.752, and 16.754 apply to such agreement. Section 20.932 does not
24 apply to any agreement under this subsection.

25 **SECTION 30.** 84.06 (2) (a) of the statutes is amended to read:

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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 16.82, 16.87 and 16.89, but
13 ss. 16.528, 16.752, 16.753, and 16.754 apply to the contract. Section 20.932 does not
14 apply to the contract. Any such contract involving an expenditure of \$1,000 or more
15 shall not be valid until approved by the governor. The secretary may require the
16 attorney general to examine any contract and any bond submitted in connection with
17 the contract and report on its sufficiency of form and execution. The bond required
18 by s. 779.14 (1m) is exempt from approval by the governor and shall be subject to
19 approval by the secretary. This subsection also applies to contracts with private
20 contractors based on bids for maintenance under s. 84.07.

21 **SECTION 31.** 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 Section 20.932 does not apply to the contract. Such contract is exempted from s.
8 779.14 and from all provisions of chs. 16 and 230, except ss. 16.753 and 16.754. If
9 the total estimated indebtedness to be incurred exceeds \$5,000 the contract shall not
10 be valid until approved by the governor. The provisions of this subsection relating
11 to agreements between a county and the state shall also authorize and apply to such
12 arrangements between a city, town, or a village and the state. In such cases, the
13 governing body of the city, town, or village shall enter into the agreement on behalf
14 of the municipality.

15 **SECTION 32.** 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. Section 20.932 does not apply to the contract. Every such
25 contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230, except

1 ss. 16.528, 16.752, 16.753, and 16.754. No such contract in which the total estimated
2 debt to be incurred exceeds \$5,000 shall be valid until approved by the governor. As
3 used in this subsection, “public utility” means the same as in s. 196.01 (5), and
4 includes a telecommunications carrier as defined in s. 196.01 (8m), and “railroad”
5 means the same as in s. 195.02. “Property” as used in this subsection includes but
6 is not limited to tracks, trestles, signals, grade crossings, rights-of-way, stations,
7 pole lines, plants, substations, and other facilities. Nothing in this subsection shall
8 be 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 33.** 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 but are exempt from ss. 16.70 to 16.75, 16.755 to 16.82, 16.85 to
15 16.87, and 16.875 to 16.89. Section 20.932 does not apply to contracts specified in
16 this section.

17 **SECTION 34.** 85.65 of the statutes is created to read:

18 ~~**85.65 Workload outsourcing rules.** The department shall promulgate rules
19 establishing a methodology to determine the percentage of work for which the
20 department has responsibility that the department may outsource to persons not
21 employed by the department. The rules shall set forth a process by which the
22 department could attain staffing levels sufficiently proficient to ensure that not more
23 than 50 percent of work for which the department has responsibility is outsourced
24 to persons not employed by the department.~~

25 **SECTION 35.** 102.81 (2) of the statutes is amended to read:

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

14 ~~SECTION 36. 103.50 (2) of the statutes is amended to read:~~

15 ~~103.50 (2) PREVAILING WAGE RATES AND HOURS OF LABOR. No person performing~~
16 ~~the work described in sub. (2m) in the employ of a contractor, subcontractor, agent~~
17 ~~or other person performing any work on a project under a contract based on bids as~~
18 ~~provided in s. 84.06 (2) or (3) to which the state is a party for the construction or~~
19 ~~improvement of any highway may be permitted to work a greater number of hours~~
20 ~~per day or per week than the prevailing hours of labor; nor may he or she be paid a~~
21 ~~lesser rate of wages than the prevailing wage rate in the area in which the work is~~
22 ~~to be done determined under sub. (3); except that any such person may be permitted~~
23 ~~or required to work more than such prevailing hours of labor per day and per week~~
24 ~~if he or she is paid for all hours worked in excess of the prevailing hours of labor at~~
25 ~~a rate of at least 1.5 times his or her hourly basic rate of pay.~~

1 **SECTION 37.** 165.08 of the statutes is amended to read:

2 **165.08 Power to compromise.** Any civil action prosecuted by the
3 department by direction of any officer, department, board or commission, shall be
4 compromised or discontinued when so directed by such officer, department, board or
5 commission. Except as provided in ~~s. ss.~~ 20.931 (7) (b) and 20.932 (7) (b), any civil
6 action prosecuted by the department on the initiative of the attorney general, or at
7 the request of any individual may be compromised or discontinued with the approval
8 of the governor. In any criminal action prosecuted by the attorney general, the
9 department shall have the same powers with reference to such action as are vested
10 in district attorneys.

11 **SECTION 38.** 165.25 (11) of the statutes is amended to read:

12 165.25 (11) FALSE CLAIMS. Diligently investigate possible violations of s. 20.931
13 or 20.932, and, if the department determines that a person has committed an act that
14 is punishable under s. 20.931 or 20.932, whichever is being investigated, may bring
15 a civil action against that person.

16 **SECTION 39.** 221.0903 (4) (b) of the statutes is amended to read:

17 221.0903 (4) (b) *Contracts for examination services.* The division may enter
18 into contracts with any bank supervisory agency with concurrent jurisdiction over
19 a state bank or an in-state branch of an out-of-state state bank to engage the
20 services of the agency's examiners at a reasonable rate of compensation, or to provide
21 the services of the division's examiners to the agency at a reasonable rate of
22 compensation. Contracts entered into under this paragraph are exempt from ss.
23 16.70 to 16.752, 16.754 to 16.76, and 16.767 to 16.77, and 16.78 to 16.82.

24 **SECTION 40.** 801.02 (1) of the statutes is amended to read:

1 801.02 (1) Except as provided in ~~s. ss.~~ ss. 20.931 (5) (b) and 20.932 (5) (b), a civil
2 action in which a personal judgment is sought is commenced as to any defendant
3 when a summons and a complaint naming the person as defendant are filed with the
4 court, provided service of an authenticated copy of the summons and of the complaint
5 is made upon the defendant under this chapter within 90 days after filing.

6 **SECTION 41.** 803.09 (1) and (2) of the statutes are amended to read:

7 803.09 (1) Except as provided in ~~s. ss.~~ ss. 20.931 and 20.932, upon timely motion
8 anyone shall be permitted to intervene in an action when the movant claims an
9 interest relating to the property or transaction which is the subject of the action and
10 the movant is so situated that the disposition of the action may as a practical matter
11 impair or impede the movant's ability to protect that interest, unless the movant's
12 interest is adequately represented by existing parties.

13 (2) Except as provided in ~~s. ss.~~ ss. 20.931 and 20.932, upon timely motion anyone
14 may be permitted to intervene in an action when a movant's claim or defense and the
15 main action have a question of law or fact in common. When a party to an action
16 relies for ground of claim or defense upon any statute or executive order or rule
17 administered by a federal or state governmental officer or agency or upon any
18 regulation, order, rule, requirement or agreement issued or made pursuant to the
19 statute or executive order, the officer or agency upon timely motion may be permitted
20 to intervene in the action. In exercising its discretion the court shall consider
21 whether the intervention will unduly delay or prejudice the adjudication of the rights
22 of the original parties.

23 **SECTION 42.** 804.01 (2) (intro.) of the statutes is amended to read:

1 804.01 (2) SCOPE OF DISCOVERY. (intro.) Except as provided in s. ss. 20.931 (9)
2 and 20.932 (9), and unless otherwise limited by order of the court in accordance with
3 the provisions of this chapter, the scope of discovery is as follows:

4 **SECTION 43.** 805.04 (2m) of the statutes is amended to read:

5 805.04 (2m) FALSE CLAIMS. An action filed under s. 20.931 or 20.932 may be
6 dismissed only by order of the court. In determining whether to dismiss the action
7 filed under s. 20.931 or 20.932, the court shall take into account the best interests
8 of the parties and the purposes of s. 20.931 or 20.932, whichever is appropriate.

9 **SECTION 44.** 893.981 of the statutes is amended to read:

10 **893.981 False claims.** An action or claim under s. 20.931 or 20.932 shall be
11 commenced within 10 years after the cause of the action or claim accrues or be
12 barred. *INSERT BLUE*

13 **SECTION 45. Nonstatutory provisions.**

14 (1) REPORT ON LOCAL ROAD PROJECTS. No later than the first day of the 7th month
15 beginning after the effective date of this subsection, the department of
16 transportation shall submit a report to the joint committee on finance that contains
17 all of the following:

18 (a) Recommendations on actions that the department and local governments
19 can take to improve the efficiency, cost-effectiveness, and timeliness of local road
20 construction projects.

21 (b) Any proposed legislative changes that the legislature can consider that may
22 help to implement the recommendations under paragraph (a).

23 (2) REPORT ON WORKLOAD OUTSOURCING. No later than February 1, 2011, the
24 department of transportation shall submit to the legislature under section 13.172 (2)
25 of the statutes a report on the work for which the department of transportation has

*END
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INSERT INITIAL APP

Section #. Initial applicability

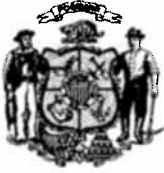
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~~#~~ The treatment of sections 16.771, 16.871, 25.18 (1) (a), (f), and (m), 66.0902, 84.01 (13), 84.06 (2) (a), (3), and (4), 85.015, 102.81 (2), and 221.0903 (4) (b) of the

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

(END)

This act



SENATE AMENDMENT 2,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2009 SENATE BILL 447

April 20, 2010 - Offered by JOINT COMMITTEE ON FINANCE.

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 32, line 10: delete "or 20.932".

3 2. Page 32, line 12: after "barred." insert "An action or claim under s. 20.932
4 shall be commenced within 3 years after the cause of the action or claim accrues or
5 be barred.".

6 (END)

INSERT
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2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4058/1insAG
ARG:.....

1

2

INS ANAL AG:

9 The provisions of the bill do not apply to certain contracts of the Department of Transportation, including engineering and highway construction contracts, or to certain contracts of the Investment Board, including investment-related contracts.

Basford, Sarah

From: Wilson, Danielle

Sent: Monday, March 12, 2012 2:51 PM

To: LRB.Legal

Subject: Draft Review: LRB 11-4058/1 Topic: False claims

Please Jacket LRB 11-4058/1 for the SENATE.

3/12/2012