

2017 DRAFTING REQUEST**Bill**

For: **Robert Cowles (608) 266-0484** Drafter: **emueller**
 By: **Anna Henning** Secondary Drafters:
 Date: **1/26/2017** May Contact:
 Same as LRB: **-2168**

Submit via email: **YES**
 Requester's email: **Sen.Cowles@legis.wisconsin.gov**
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Anna.henning@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Statutory change recommendations from legislative audit bureau audit of state highway program

Instructions:

Statutory change recommendations from legislative audit bureau audit of state highway program

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	emueller 2/10/2017				
/P1	zwyatt 2/15/2017	jdyer 2/16/2017	lparisi 2/10/2017		
/P2	emueller 2/16/2017		mbarman 2/16/2017		
/P3	emueller 2/16/2017	anienaja 2/16/2017	lparisi 2/16/2017		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1		anienaja 2/16/2017	mbarman 2/16/2017	hkohn 2/22/2017	

FE Sent For: 2

<END>

None
Needed

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1852/P1dn

EVM:... amy

- Date -

ATTN: Sen. Robert Cowles

1. The implementation of the construction manager-general contractor method of project completion (p. 91 of the LAB report) is the same as is included in the budget bill (AB 64/SB 30).

* 2. Sections 1 and 2 are intended to implement the LAB's recommendation (p. 44 of the LAB report) that specifies how DOT determines the cost estimates of potential major highway projects. The LAB report suggests that this specification would effect cost estimates that are provided to the Governor and Legislature at the time a major highway project is enumerated. Current statutes do not appear to specify cost estimates at that point in the approval process. I have, therefore, placed the cost estimate specifications in the existing Transportation Projects Commission procedure. Please let me know if you want this changed.

* 3. As currently written, the DOT report to the Legislature regarding major projects (p.45 of the LAB report) must be provided annually. LAB suggested the report could be either annual or semiannual. Please let me know if you want any changes.

* 4. For your reference, the bill sections for each LAB recommendation (by the page number of the recommendation) are as follows:

p. 38 - section 3

p. 44 - sections 1 and 2

p. 45 - sections 4 and 6

p. 70 - section 5

p. 91 - sections 6-14

Eric V. Mueller
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State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1852/P1

EVM:... *amr*

ZZDW

RMR

DNote

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERT

2/10/17

*SA
Xref
Pwf*

gew

1 AN ACT ...; relating to: use of the construction manager-general contractor
2 process for highway project contracting, major highway project reports, and
3 cost-benefit analyses of certain services related to transportation.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 13.489 (3) of the statutes is amended to read:

5 ~~X~~13.489 (3) ASSISTANCE TO COMMISSION. (a) The department of transportation
6 shall assist the commission in the performance of its duties. (b) 1. The department
7 of transportation shall, when requested by the commission, make or cause to be made
8 such any studies and cost estimates with respect to any proposed project as that are
9 necessary to permit the commission to consider the project. 3. The costs of such

1 studies under this paragraph shall be charged to the appropriate program
2 appropriation under s. 20.395.

History: 1983 a. 27; 1985 a. 2; 1985 a. 29 ss. 27 to 29/3202 (51); 1987 a. 27; 1993 a. 16; 1997 a. 27, 86; 1999 a. 9; 2003 a. 217; 2007 a. 20; 2011 a. 32; 2015 a. 55, 196.

3 **SECTION 2.** 13.489 (3) (b) 2. of the statutes is created to read:

4 ~~13.489 (3) (b) 2.~~ When the department provides a full project cost estimate
5 under this paragraph, the estimate shall include all costs associated with the project,
6 including design engineering and construction engineering costs, the costs of
7 environmental studies, and costs of the project that are paid by another program of
8 the department. A full project cost estimate under this paragraph shall include an
9 estimate of the effects of inflation and unexpected costs on the cost of the project.

10 **SECTION 3.** 13.489 (5) (a) 3. of the statutes is created to read:

11 ~~13.489 (5) (a) 3.~~ For each project specified under subd. 1., identifies the full
12 project cost estimate of the project made for the commission as of the date of the
13 commission's approval of the project.

14 **SECTION 4.** 13.489 (5) (am) of the statutes is created to read:

15 ~~13.489 (5) (am)~~ The report under par. (a) shall treat separately and as described
16 in the enumerating statute each project enumerated under s. 84.013 (3) or 84.0145
17 (3) (b) and shall treat separately each project approved under s. 84.013 (6).

18 **SECTION 5.** 84.01 (13) of the statutes is amended to read:

19 ~~84.01 (13)~~ **ENGINEERING SERVICES.** The department may engage such
20 engineering, consulting, surveying, or other specialized services as it deems
21 advisable. Any engagement of services under this subsection is exempt from ss.
22 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
23 16.754 apply to such engagement. Any engagement involving an expenditure of
24 \$3,000 or more shall be by formal contract approved by the governor. The

1 department shall conduct a uniform cost-benefit analysis, as defined in s. 16.70 (3g),
2 of each proposed engagement under this subsection that involves an estimated
3 expenditure of more than \$300,000 in accordance with standards prescribed by rule
4 of the department and consider the results of the analysis in the determination of
5 whether to undertake the proposed engagement. The department shall review
6 periodically, and before any renewal, the continued appropriateness of contracting
7 pursuant to each engagement under this subsection that involves an estimated
8 expenditure of more than \$300,000.

9 Cross-reference: Cross-reference: Cross-reference: See also ch. Trans 515, Wis. adm. code.
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, 167; 2013 a. 20; 2015 a. 55.

10 **SECTION 6.** 84.013 (1m) of the statutes is created to read:

11 ~~84.013 (1m)~~ (a) Annually no later than February 1, the department shall
12 prepare and submit a report under s. 13.172 (3) to the standing committees of the
13 legislature with jurisdiction over transportation matters that provides all of the
14 following information for each project enumerated under s. 84.013 (3) or 84.0145 (3)

15 (b) or approved under s. 84.013 (6):

- 16 1. The full project cost estimate of the project as of the date of enumeration.
- 17 2. The year in which the department expects to complete the project.
- 18 3. The costs incurred as of the date of preparation of the report.
- 19 4. The full project cost estimate of the project as of the date of preparation of
20 the report.
- 21 5. An explanation of any difference between the full project cost estimates
22 under subs. 1. and 4. that has not been addressed in a previous report under this
23 paragraph.



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0997/P3
ZDW:amn

DOA:.....Mette, BB0138 - CMGC bidding

FOR 2017-2019 BUDGET -- NOT READY FOR INTRODUCTION

SA ✓
PWF ✓

INSERT

1 **AN ACT ...; relating to: the budget.**

Analysis by the Legislative Reference Bureau

TRANSPORTATION

HIGHWAYS

Under current law, highway improvement projects undertaken by DOT must be executed by contract based on bids, with limited exceptions. This bill authorizes DOT, for no more than three highway improvement projects, to enter into contracts using a construction manager-general contractor process. Under this process, the department contracts with a provider of construction services to supervise the design work for the project and, subject to an acceptable proposal, contracts with the provider of construction services for construction of the project. This bill authorizes DOT to enter into no more than three design contracts utilizing the construction manager-general contractor process no later than July 1, 2021.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 **SECTION 1.** 84.06 (1) (a) of the statutes is renumbered 84.06 (1) (am).

3 **SECTION 2.** 84.06 (1) (ag) of the statutes is created to read:



1 84.06 (1) (ag) "Construction manager" means a person in the business of
2 providing construction services that is also qualified to supervise, manage, or
3 otherwise participate in the engineering, design, or construction work for an
4 improvement project.

5 **SECTION 3.** 84.06 (1) (aj) of the statutes is created to read:

6 84.06 (1) (aj) "Construction manager-general contractor contract" means a
7 contract for an improvement project awarded under sub. (2m).

8 **SECTION 4.** 84.06 (2) (a) of the statutes is amended to read:

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

1 by the governor and shall be subject to approval by the secretary. This subsection
2 also applies to contracts with private contractors based on bids for maintenance
3 under s. 84.07.

4 **SECTION 5.** 84.06 (2m) of the statutes is created to read:

5 **84.06 (2m) CONSTRUCTION MANAGER-GENERAL CONTRACTOR PROCESS.** (a) If the
6 department finds that it would be more feasible and advantageous, the department
7 may, prior to July 1, 2021, award a 2-phase construction manager-general
8 contractor contract to a construction manager for preconstruction and construction
9 services for an improvement project.

10 (b) For the design and engineering phase, the department may award a
11 construction manager-general contractor contract to a construction manager based
12 on qualifications, experience, best value, or any other combination of factors the
13 department considers appropriate.

14 (c) Before the project design is 90 percent complete, the construction manager
15 shall provide to the department a proposal for the construction manager to construct
16 the project. The proposal shall certify that at least 30 percent of the work for the
17 construction phase shall be performed by the construction manager.

18 (d) The department shall obtain an independent cost estimate for the
19 construction of the project.

20 (e) For the construction phase, the department may do any of the following:

21 1. Enter into a construction contract with the construction manager pursuant
22 to a proposal under par. (c).

23 2. Award the construction contract in accordance with sub. (2).

24 (f) The department may utilize a construction manager-general contractor
25 contract for no more than 3 highway improvement projects.



1 **SECTION 6.** 779.14 (1) (b) of the statutes is amended to read:

2 779.14 (1) (b) With respect to contracts entered into under s. 84.06 (2) or (2m)
3 for highway improvements, any person who has a direct contractual relationship,
4 expressed or implied, with the prime contractor to perform, furnish, or procure labor,
5 services, materials, plans, or specifications.

6 **SECTION 7.** 779.14 (2) (a) 3. of the statutes is amended to read:

7 779.14 (2) (a) 3. With respect to contracts entered into under s. 84.06 (2) or (2m)
8 for highway improvements, failure of the prime contractor to comply with a contract,
9 whether express or implied, with a subcontractor, supplier, or service provider of the
10 prime contractor for performing, furnishing, or procuring labor, services, materials,
11 plans, or specifications for the purpose of making the highway improvement that is
12 the subject of the contract with the governmental entity.

13 **SECTION 8.** 895.56 (2) (a) of the statutes is amended to read:

14 895.56 (2) (a) The acts or omissions by the person occurred while performing
15 a contract entered into under s. 84.06 (2) or (2m), including acts or omissions by any
16 person who has a direct contractual relationship with the prime contractor, as
17 defined in s. 779.01 (2) (d), under a contract entered into under s. 84.06 (2) or (2m)
18 to perform labor or furnish materials.

19 **SECTION 9.** 895.56 (2) (c) of the statutes is amended to read:

20 895.56 (2) (c) The acts or omissions involving petroleum-contaminated soil on
21 the property were required by reasonably precise specifications in the contract
22 entered into under s. 84.06 (2) or (2m), and the acts or omissions conformed to those
23 specifications, or were otherwise directed by the department of transportation or by
24 the department of natural resources.

25

SECTION 9345. Initial applicability; Transportation.





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(1) CONSTRUCTION MANAGER-GENERAL CONTRACTOR PROCESS The treatment of sections 84.06 (1) (a), (ag), and (aj), (2) (a), and (2m), 779.14 (1) (b) and (2) (a) 3., and 895.56 (2) (a) and (c) of the statutes first applies to contracts entered into on the effective date of this subsection.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1852/P1dn
EVM:amn

February 10, 2017

ATTN: Sen. Robert Cowles

1. The implementation of the construction manager-general contractor method of project completion (p. 91 of the LAB report) is the same as is included in the budget bill (AB 64/SB 30).

2. Sections 1 and 2 are intended to implement the LAB's recommendation (p. 44 of the LAB report) that specifies how DOT determines the cost estimates of potential major highway projects. The LAB report suggests that this specification would effect cost estimates that are provided to the governor and legislature at the time a major highway project is enumerated. Current statutes do not appear to specify cost estimates at that point in the approval process. I have, therefore, placed the cost estimate specifications in the existing Transportation Projects Commission procedure. Please let me know if you want this changed.

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4. For your reference, the bill sections for each LAB recommendation (by the page number of the recommendation) are as follows:

p. 38 - section 3

p. 44 - sections 1 and 2

p. 45 - sections 4 and 6

p. 70 - section 5

p. 91 - sections 6-14

Eric V. Mueller
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

✓ *Reger*

1 AN ACT *to renumber* 84.06 (1) (a); *to amend* 13.489 (3), 84.01 (13), 84.06 (2) (a),
2 779.14 (1) (b), 779.14 (2) (a) 3., 895.56 (2) (a) and 895.56 (2) (c); and *to create*
3 13.489 (3) (b) 2., 13.489 (5) (a) 3., 13.489 (5) (am), 84.013 (1m), 84.06 (1) (ag),
4 84.06 (1) (aj) and 84.06 (2m) of the statutes; **relating to:** use of the construction
5 manager-general contractor process for highway project contracting, major
6 highway project reports, and cost-benefit analyses of certain services related
7 to transportation. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

8 SECTION 1. 13.489 (3) of the statutes is amended to read:
9 13.489 (3) ASSISTANCE TO COMMISSION. (a) The department of transportation
10 shall assist the commission in the performance of its duties.

1 **(b) 1.** The department of transportation shall, when requested by the
2 commission, make or cause to be made such any studies and cost estimates with
3 respect to any proposed project as that are necessary to permit the commission to
4 consider the project.

5 **3.** The costs of such studies under this paragraph shall be charged to the
6 appropriate program appropriation under s. 20.395.

7 **SECTION 2.** 13.489 (3) (b) 2. of the statutes is created to read:

8 13.489 (3) (b) 2. When the department provides a full project cost estimate
9 under this paragraph, the estimate shall include all costs associated with the project,
10 including ^{all costs before enumeration, ✓} design engineering and construction engineering costs, the costs of
11 environmental studies, and costs of the project that are paid by another program of
12 the department. A full project cost estimate under this paragraph shall include an
13 estimate of the effects of ^{construction cost ✓} inflation and [✓] unexpected costs on the cost of the project.

14 **SECTION 3.** 13.489 (5) (a) 3. of the statutes is created to read:

15 13.489 (5) (a) 3. For each project specified under subd. 1., identifies the full
16 project cost estimate of the project made for the commission as of the date of the
17 commission's approval of the project.

18 **SECTION 4.** 13.489 (5) (am) of the statutes is created to read:

19 13.489 (5) (am) The report under par. (a) shall treat separately and as described
20 in the enumerating statute each project enumerated under s. 84.013 (3) or 84.0145
21 (3) (b) and shall treat separately each project approved under s. 84.013 (6).

22 **SECTION 5.** 84.01 (13) of the statutes is amended to read:

23 84.01 (13) **ENGINEERING SERVICES.** The department may engage such
24 engineering, consulting, surveying, or other specialized services as it deems
25 advisable. Any engagement of services under this subsection is exempt from ss.

1 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
 2 16.754 apply to such engagement. Any engagement involving an expenditure of
 3 \$3,000 or more shall be by formal contract approved by the governor. The
 4 department shall conduct a uniform cost-benefit analysis, as defined in s. 16.70 (3g),
 5 of each proposed engagement under this subsection that involves an estimated
 6 expenditure of more than \$300,000 in accordance with standards prescribed by rule
 7 of the department and ^{and document} consider the results of the analysis ^{a before} in the determination of
 8 whether to undertake the proposed engagement. The department shall review
 9 periodically, and before any renewal, the continued appropriateness of contracting
 10 pursuant to each engagement under this subsection that involves an estimated
 11 expenditure of more than \$300,000.

12 SECTION 6. 84.013 (1m) of the statutes is created to read:

13 84.013 (1m) (a) Annually no later than February 1, the department shall
 14 prepare and submit a report under s. 13.172 (3) to the standing committees of the
 15 legislature with jurisdiction over transportation matters that provides all of the
 16 following information for each project enumerated under s. 84.013 (3) or 84.0145 (3)
 17 (b) or approved under s. 84.013 (6):

- 18 1. The full project cost estimate ^{as established under s. 13.489 (3)(b) 2,} of the project as of the date of enumeration.
- 19 2. The year in which the department expects to complete the project ^{as of the date of enumeration}
- 20 3. The costs incurred as of the date of preparation of the report.
- 21 4. The full project cost estimate ^{as established under s. 13.489 (3)(b) 2,} of the project as of the date of preparation of
 22 the report. 5. ^{The year in which the department expects to complete the project as of the date}
^{of preparation of the report,}

23 6. An explanation of any difference between the full project cost estimates
 24 under subds. 1. and 4. that has not been addressed in a previous report under this
 25 paragraph.

① ④ ⑥^{e/7.} The opinion of the department as to whether the project will be completed
 ② as originally scheduled without the appropriation of additional funds. ✓
 allocation

3 (b) The report under par. (a) shall treat separately and as described in the
 4 enumerating statute each project enumerated under s. 84.013 (3) or 84.0145 (3) (b)
 5 and shall treat separately each project approved under s. 84.013 (6).

6 SECTION 7. 84.06 (1) (a) of the statutes is renumbered 84.06 (1) (am).

7 SECTION 8. 84.06 (1) (ag) of the statutes is created to read:

8 84.06 (1) (ag) "Construction manager" means a person in the business of
 9 providing construction services that is also qualified to supervise, manage, or
 10 otherwise participate in the engineering, design, or construction work for an
 11 improvement project.

12 SECTION 9. 84.06 (1) (aj) of the statutes is created to read:

13 84.06 (1) (aj) "Construction manager-general contractor contract" means a
 14 contract for an improvement project awarded under sub. (2m).

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

16 84.06 (2) (a) All such highway improvements shall be executed by contract
 17 based on bids unless the department finds that another method as provided in sub.
 18 (2m), (3), or (4) would be more feasible and advantageous. Bids shall be advertised
 19 for in the manner determined by the department. Except as provided in s. 84.075,
 20 the contract shall be awarded to the lowest competent and responsible bidder as
 21 determined by the department. If the bid of the lowest competent bidder is
 22 determined by the department to be in excess of the estimated reasonable value of
 23 the work or not in the public interest, all bids may be rejected. The department shall,
 24 so far as reasonable, follow uniform methods of advertising for bids and may
 25 prescribe and require uniform forms of bids and contracts. Except as provided in par.

1 (b), the secretary shall enter into the contract on behalf of the state. Every such
2 contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.82, 16.87 and 16.89, but
3 ss. 16.528, 16.752, 16.753, and 16.754 apply to the contract. Any such contract
4 involving an expenditure of \$1,000 or more shall not be valid until approved by the
5 governor. The secretary may require the attorney general to examine any contract
6 and any bond submitted in connection with the contract and report on its sufficiency
7 of form and execution. The bond required by s. 779.14 (1m) is exempt from approval
8 by the governor and shall be subject to approval by the secretary. This subsection
9 also applies to contracts with private contractors based on bids for maintenance
10 under s. 84.07.

11 **SECTION 11.** 84.06 (2m) of the statutes is created to read:

12 **84.06 (2m) CONSTRUCTION MANAGER-GENERAL CONTRACTOR PROCESS.** (a) If the
13 department finds that it would be more feasible and advantageous, the department
14 may, prior to July 1, 2021, award a 2-phase construction manager-general
15 contractor contract to a construction manager for preconstruction and construction
16 services for an improvement project.

17 (b) For the design and engineering phase, the department may award a
18 construction manager-general contractor contract to a construction manager based
19 on qualifications, experience, best value, or any other combination of factors the
20 department considers appropriate.

21 (c) Before the project design is 90 percent complete, the construction manager
22 shall provide to the department a proposal for the construction manager to construct
23 the project. The proposal shall certify that at least 30 percent of the work for the
24 construction phase shall be performed by the construction manager.

1 (d) The department shall obtain an independent cost estimate for the
2 construction of the project.

3 (e) For the construction phase, the department may do any of the following:

4 1. Enter into a construction contract with the construction manager pursuant
5 to a proposal under par. (c).

6 2. Award the construction contract in accordance with sub. (2).

7 (f) The department may utilize a construction manager-general contractor
8 contract for no more than 3 highway improvement projects.

9 **SECTION 12.** 779.14 (1) (b) of the statutes is amended to read:

10 779.14 (1) (b) With respect to contracts entered into under s. 84.06 (2) or (2m)
11 for highway improvements, any person who has a direct contractual relationship,
12 expressed or implied, with the prime contractor to perform, furnish, or procure labor,
13 services, materials, plans, or specifications.

14 **SECTION 13.** 779.14 (2) (a) 3. of the statutes is amended to read:

15 779.14 (2) (a) 3. With respect to contracts entered into under s. 84.06 (2) or (2m)
16 for highway improvements, failure of the prime contractor to comply with a contract,
17 whether express or implied, with a subcontractor, supplier, or service provider of the
18 prime contractor for performing, furnishing, or procuring labor, services, materials,
19 plans, or specifications for the purpose of making the highway improvement that is
20 the subject of the contract with the governmental entity.

21 **SECTION 14.** 895.56 (2) (a) of the statutes is amended to read:

22 895.56 (2) (a) The acts or omissions by the person occurred while performing
23 a contract entered into under s. 84.06 (2) or (2m), including acts or omissions by any
24 person who has a direct contractual relationship with the prime contractor, as

1 defined in s. 779.01 (2) (d), under a contract entered into under s. 84.06 (2) or (2m)
2 to perform labor or furnish materials.

3 **SECTION 15.** 895.56 (2) (c) of the statutes is amended to read:

4 895.56 (2) (c) The acts or omissions involving petroleum-contaminated soil on
5 the property were required by reasonably precise specifications in the contract
6 entered into under s. 84.06 (2) or (2m), and the acts or omissions conformed to those
7 specifications, or were otherwise directed by the department of transportation or by
8 the department of natural resources.

9 **SECTION 16. Initial applicability.**

10 (1) The treatment of sections 84.06 (1) (a), (ag), and (aj), (2) (a), and (2m), 779.14
11 (1) (b) and (2) (a) 3., and 895.56 (2) (a) and (c) of the statutes first applies to contracts
12 entered into on the effective date of this subsection.

13

(END)

Wyatt, Zachary

From: Mugnaini, Jason
Sent: Wednesday, February 15, 2017 5:03 PM
To: Wyatt, Zachary
Cc: Mueller, Eric
Subject: Changes to LRB-1852
Attachments: 17-1852_P1.pdf

Zach,

- ✓ Pg. 2 Ln. 10- after the word "Including" please add, ", all costs before enumeration," Nothing to be deleted
- ✓ Pg. 2 Ln. 13- After the words "effect of" please add "construction cost"
- ✓ Pg. 3 Ln. 7- After the word "consider" please add, "and document"
- ✓ Pg. 3 Ln. 7- After the word "analysis" please replace "in" with "before"

Pg. 3 Ln. 18 on. Red is new

- ✓ 1. The full project cost estimate, as defined under s. 13.489 (3) (b) 2, of the project as of the date of enumeration
- ✓ 2. The year in which the department expected to complete the project as of the date of enumeration.
- ✓ 3. The costs incurred as of the date of the preparation of the report
- ✓ 4. The full project cost estimate, as defined under s. 13.489 (3) (b) 2, of the project as of the date of preparation of the report
- ✓ 5. The year in which the Department expects to complete the project as of the date of preparation of the report (Currently #2)
- ✓ 6. Current #5
- 7. Current #6 – only change is replace "appropriation" with "allocation"

Sorry, this took longer than I anticipated -_-

Jason Mugnaini Chief of Staff | Office of State Senator Robert Cowles
(608) 266-0484 | (847) 722-0219 (Cell) | 118 South, State Capitol | <http://legis.wisconsin.gov/senate/02/cowles>



Mueller, Eric

From: Mugnaini, Jason
Sent: Thursday, February 16, 2017 11:36 AM
To: Wyatt, Zachary; Mueller, Eric
Subject: Change to LRB-1852

Hey guys,

Thanks for the incredibly fast turnaround on the changes from yesterday.

I have another small change

-Pg. 2 Ln. 13 after the word "include" please add "the anticipated date of completion"

-Pg. 3 Ln. 15 – Please include that the report should also go to JFC and Joint Legislative Audit Committee

Thanks!!!

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State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1852/P2 P3
EVM&ZDW:amn&jld

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERT
SAV
PWF

2/16/17

Regen.

1 AN ACT *to renumber* 84.06 (1) (a); *to amend* 13.489 (3), 84.01 (13), 84.06 (2) (a),
2 779.14 (1) (b), 779.14 (2) (a) 3., 895.56 (2) (a) and 895.56 (2) (c); and *to create*
3 13.489 (3) (b) 2., 13.489 (5) (a) 3., 13.489 (5) (am), 84.013 (1m), 84.06 (1) (ag),
4 84.06 (1) (aj) and 84.06 (2m) of the statutes; **relating to:** use of the construction
5 manager-general contractor process for highway project contracting, major
6 highway project reports, and cost-benefit analyses of certain services related
7 to transportation.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

RNS
Analysis

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

8 SECTION 1. 13.489 (3) of the statutes is amended to read:
9 13.489 (3) ASSISTANCE TO COMMISSION. (a) The department of transportation
10 shall assist the commission in the performance of its duties.

1 **(b) 1.** The department of transportation shall, when requested by the
2 commission, make or cause to be made such any studies and cost estimates with
3 respect to any proposed project as that are necessary to permit the commission to
4 consider the project.

5 **3.** The costs of such studies under this paragraph shall be charged to the
6 appropriate program appropriation under s. 20.395.

7 **SECTION 2.** 13.489 (3) (b) 2. of the statutes is created to read:

8 13.489 (3) (b) 2. When the department provides a full project cost estimate
9 under this paragraph, the estimate shall include all costs associated with the project,
10 including all costs before enumeration, design engineering and construction
11 engineering costs, the costs of environmental studies, and costs of the project that are
12 paid by another program of the department. A full project cost estimate under this
13 paragraph shall include ^{the expected date of completion and} an estimate of the effects of construction cost inflation and
14 unexpected costs on the cost of the project.

15 **SECTION 3.** 13.489 (5) (a) 3. of the statutes is created to read:

16 13.489 (5) (a) 3. For each project specified under subd. 1., identifies the full
17 project cost estimate of the project made for the commission as of the date of the
18 commission's approval of the project.

19 **SECTION 4.** 13.489 (5) (am) of the statutes is created to read:

20 13.489 (5) (am) The report under par. (a) shall treat separately and as described
21 in the enumerating statute each project enumerated under s. 84.013 (3) or 84.0145
22 (3) (b) and shall treat separately each project approved under s. 84.013 (6).

23 **SECTION 5.** 84.01 (13) of the statutes is amended to read:

24 84.01 (13) ENGINEERING SERVICES. The department may engage such
25 engineering, consulting, surveying, or other specialized services as it deems

1 advisable. Any engagement of services under this subsection is exempt from ss.
2 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
3 16.754 apply to such engagement. Any engagement involving an expenditure of
4 \$3,000 or more shall be by formal contract approved by the governor. The
5 department shall conduct a uniform cost-benefit analysis, as defined in s. 16.70 (3g),
6 of each proposed engagement under this subsection that involves an estimated
7 expenditure of more than \$300,000 in accordance with standards prescribed by rule
8 of the department and consider and document the results of the analysis before the
9 determination of whether to undertake the proposed engagement. The department
10 shall review periodically, and before any renewal, the continued appropriateness of
11 contracting pursuant to each engagement under this subsection that involves an
12 estimated expenditure of more than \$300,000.

13 **SECTION 6.** 84.013 (1m) of the statutes is created to read:

14 84.013 (1m) (a) Annually no later than February 1, the department shall
15 prepare and submit ^a a report under s. 13.172 (3) to ^{a report} the standing committees of the
16 legislature with jurisdiction over transportation matters that provides all of the
17 following information for each project enumerated under s. 84.013 (3) or 84.0145 (3)
18 (b) or approved under s. 84.013 (6):

- 19 1. The full project cost estimate, as established under s. 13.489 (3) (b) 2., of the
20 project as of the date of enumeration.
- 21 2. The year in which the department expects to complete the project as of the
22 date of enumeration.
- 23 3. The costs incurred as of the date of preparation of the report.
- 24 4. The full project cost estimate, as established under s. 13.489 (3) (b) 2., of the
25 project as of the date of preparation of the report.

the joint finance committee, the joint legislative
audit committee, and

1 5. The year in which the department expects to complete the project as of the
2 date of preparation of the report.

3 6. An explanation of any difference between the full project cost estimates
4 under subds. 1. and 4. that has not been addressed in a previous report under this
5 paragraph.

6 7. The opinion of the department as to whether the project will be completed
7 as originally scheduled without the allocation of additional funds.

8 (b) The report under par. (a) shall treat separately and as described in the
9 enumerating statute each project enumerated under s. 84.013 (3) or 84.0145 (3) (b)
10 and shall treat separately each project approved under s. 84.013 (6).

11 **SECTION 7.** 84.06 (1) (a) of the statutes is renumbered 84.06 (1) (am).

12 **SECTION 8.** 84.06 (1) (ag) of the statutes is created to read:

13 84.06 (1) (ag) "Construction manager" means a person in the business of
14 providing construction services that is also qualified to supervise, manage, or
15 otherwise participate in the engineering, design, or construction work for an
16 improvement project.

17 **SECTION 9.** 84.06 (1) (aj) of the statutes is created to read:

18 84.06 (1) (aj) "Construction manager-general contractor contract" means a
19 contract for an improvement project awarded under sub. (2m).

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

21 84.06 (2) (a) All such highway improvements shall be executed by contract
22 based on bids unless the department finds that another method as provided in sub.
23 (2m), (3), or (4) would be more feasible and advantageous. Bids shall be advertised
24 for in the manner determined by the department. Except as provided in s. 84.075,
25 the contract shall be awarded to the lowest competent and responsible bidder as

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

16 **SECTION 11.** 84.06 (2m) of the statutes is created to read:

17 84.06 (2m) CONSTRUCTION MANAGER-GENERAL CONTRACTOR PROCESS. (a) If the
18 department finds that it would be more feasible and advantageous, the department
19 may, prior to July 1, 2021, award a 2-phase construction manager-general
20 contractor contract to a construction manager for preconstruction and construction
21 services for an improvement project.

22 (b) For the design and engineering phase, the department may award a
23 construction manager-general contractor contract to a construction manager based
24 on qualifications, experience, best value, or any other combination of factors the
25 department considers appropriate.

1 (c) Before the project design is 90 percent complete, the construction manager
2 shall provide to the department a proposal for the construction manager to construct
3 the project. The proposal shall certify that at least 30 percent of the work for the
4 construction phase shall be performed by the construction manager.

5 (d) The department shall obtain an independent cost estimate for the
6 construction of the project.

7 (e) For the construction phase, the department may do any of the following:

8 1. Enter into a construction contract with the construction manager pursuant
9 to a proposal under par. (c).

10 2. Award the construction contract in accordance with sub. (2).

11 (f) The department may utilize a construction manager-general contractor
12 contract for no more than 3 highway improvement projects.

13 **SECTION 12.** 779.14 (1) (b) of the statutes is amended to read:

14 779.14 (1) (b) With respect to contracts entered into under s. 84.06 (2) or (2m)
15 for highway improvements, any person who has a direct contractual relationship,
16 expressed or implied, with the prime contractor to perform, furnish, or procure labor,
17 services, materials, plans, or specifications.

18 **SECTION 13.** 779.14 (2) (a) 3. of the statutes is amended to read:

19 779.14 (2) (a) 3. With respect to contracts entered into under s. 84.06 (2) or (2m)
20 for highway improvements, failure of the prime contractor to comply with a contract,
21 whether express or implied, with a subcontractor, supplier, or service provider of the
22 prime contractor for performing, furnishing, or procuring labor, services, materials,
23 plans, or specifications for the purpose of making the highway improvement that is
24 the subject of the contract with the governmental entity.

25 **SECTION 14.** 895.56 (2) (a) of the statutes is amended to read:

2017-2018 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1852/P3ins
EVM&ZDW:amn&jld

1 INS-Analysis

2

Under current law, DOT administers a major highway projects program. With limited exceptions, a major highway project is either 1) a project having a total cost of more than \$30,000,000 and involving a) construction of a new highway 2.5 miles or more in length; b) reconstruction or reconditioning of an existing highway that relocates at least 2.5 miles of the highway or adds one or more lanes five miles or more in length to the highway; or c) improvement of an existing multilane, divided highway to freeway standards or 2) a project having a total cost of at least \$75,000,000. For both categories of major highway projects, DOT annually adjusts the total cost threshold based on an inflation index.

For major highway projects of the first type, the project must generally receive the approval of the Transportation Projects Commission and the legislature (generally referred to as “enumeration”) before the project may be constructed. For major highway projects of the second type, DOT must submit a report to TPC and request TPC approval to proceed with the project under a passive review process. Once approved by TPC, the project is considered enumerated as a major highway project under the statutes.

Among the requirements of the program, DOT must provide TPC with any studies and cost estimates with respect to a proposed project that are requested by TPC.

This bill specifies that when DOT provides a full project cost estimate under this requirement, the estimate must include all costs associated with the project, including all costs before enumeration, design engineering and construction engineering costs, the costs of environmental studies, and costs of the project that are paid by another program of the department. A full project cost estimate must also include the expected date of completion and an estimate of the effects of construction cost inflation and unexpected costs on the cost of the project.

Also under current law, every six months, DOT must submit a report to the TPC that summarizes the current status of each major highway project and identifies all actual and estimated project costs, itemized by major cost categories, as of the date of preparation of the report. The project information included in these reports must be reported on both a cumulative basis from the inception of the project and on an updated basis for the period since the department’s last report.

Under this bill, these reports must also include for each project the full project cost estimate of the project made for the commission as of the date of the commission’s approval of the project. This bill also specifies that the report must treat separately and as described in the enumerating statute each project.

This bill also requires DOT to annually prepare and submit to certain legislative committees a report that provides all of the following information for each major highway project:

1. The full project cost estimate of the project as of the date of enumeration.

2. The year in which the department expects to complete the project as of the date of enumeration.
3. The costs incurred as of the date of preparation of the report.
4. The full project cost estimate as of the date of preparation of the report.
5. The year in which the department expects to complete the project as of the date of preparation of the report.
6. An explanation of any difference between the full project cost estimates under items 1. and 4.
7. The opinion of the department as to whether the project will be completed as originally scheduled without the allocation of additional funds.

The bill also specifies that this report must treat separately and as described in the enumerating statute each project.

Under current law, highway improvement projects undertaken by DOT must be executed by contract based on bids, with limited exceptions. This bill authorizes DOT, for no more than three highway improvement projects, to enter into contracts using a construction manager-general contractor process. Under this process, the department contracts with a provider of construction services to supervise the design work for the project and, subject to an acceptable proposal, contracts with the provider of construction services for construction of the project. This bill authorizes DOT to enter into no more than three design contracts utilizing the construction manager-general contractor process no later than July 1, 2021.

Under current law, DOT may engage engineering, consulting, surveying, or other specialized services and this engagement of services is exempt from certain provisions of law relating to state procurement. For an engagement of services of more than \$300,000, DOT must conduct a uniform cost-benefit analysis before the engagement and must review periodically, and before any renewal, the continued appropriateness of the engagement. Under this bill, when DOT conducts a cost-benefit analysis under this provision, DOT must also consider and document the results of the analysis before determining whether to undertake the proposed engagement.



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1852/P3
EVM&ZDW:amn&jld

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2/16/17

1 AN ACT to renumber 84.06 (1) (a); to amend 13.489 (3), 84.01 (13), 84.06 (2) (a),
2 779.14 (1) (b), 779.14 (2) (a) 3., 895.56 (2) (a) and 895.56 (2) (c); and to create
3 13.489 (3) (b) 2., 13.489 (5) (a) 3., 13.489 (5) (am), 84.013 (1m), 84.06 (1) (ag),
4 84.06 (1) (aj) and 84.06 (2m) of the statutes; relating to: use of the construction
5 manager-general contractor process for highway project contracting, major
6 highway project reports, and cost-benefit analyses of certain services related
7 to transportation.

Analysis by the Legislative Reference Bureau

Under current law, DOT administers a major highway projects program. With limited exceptions, a major highway project is either 1) a project having a total cost of more than \$30,000,000 and involving a) construction of a new highway 2.5 miles or more in length; b) reconstruction or reconditioning of an existing highway that relocates at least 2.5 miles of the highway or adds one or more lanes five miles or more in length to the highway; or c) improvement of an existing multilane, divided highway to freeway standards or 2) a project having a total cost of at least \$75,000,000. For both categories of major highway projects, DOT annually adjusts the total cost threshold based on an inflation index.

For major highway projects of the first type, the project must generally receive the approval of the Transportation Projects Commission and the legislature

This bill implements the legislative changes recommended by the legislative audit bureau in the LRB's January 2017 report regarding the state highway program

(generally referred to as “enumeration”) before the project may be constructed. For major highway projects of the second type, DOT must submit a report to TPC and request TPC approval to proceed with the project under a passive review process. Once approved by TPC, the project is considered enumerated as a major highway project under the statutes.

Among the requirements of the program, DOT must provide TPC with any studies and cost estimates with respect to a proposed project that are requested by TPC.

This bill specifies that when DOT provides a full project cost estimate under this requirement, the estimate must include all costs associated with the project, including all costs before enumeration, design engineering and construction engineering costs, the costs of environmental studies, and costs of the project that are paid by another program of the department. A full project cost estimate must also include the expected date of completion and an estimate of the effects of construction cost inflation and unexpected costs on the cost of the project.

Also under current law, every six months, DOT must submit a report to the TPC that summarizes the current status of each major highway project and identifies all actual and estimated project costs, itemized by major cost categories, as of the date of preparation of the report. The project information included in these reports must be reported on both a cumulative basis from the inception of the project and on an updated basis for the period since the department’s last report.

Under this bill, these reports must also include for each project the full project cost estimate of the project made for the commission as of the date of the commission’s approval of the project. This bill also specifies that the report must treat separately and as described in the enumerating statute each project.

This bill also requires DOT to annually prepare and submit to certain legislative committees a report that provides all of the following information for each major highway project:

1. The full project cost estimate of the project as of the date of enumeration.
2. The year in which the department expects to complete the project as of the date of enumeration.
3. The costs incurred as of the date of preparation of the report.
4. The full project cost estimate as of the date of preparation of the report.
5. The year in which the department expects to complete the project as of the date of preparation of the report.
6. An explanation of any difference between the full project cost estimates under items 1. and 4.
7. The opinion of the department as to whether the project will be completed as originally scheduled without the allocation of additional funds.

The bill also specifies that this report must treat separately and as described in the enumerating statute each project.

Under current law, highway improvement projects undertaken by DOT must be executed by contract based on bids, with limited exceptions. This bill authorizes DOT, for no more than three highway improvement projects, to enter into contracts using a construction manager-general contractor process. Under this process, the

department contracts with a provider of construction services to supervise the design work for the project and, subject to an acceptable proposal, contracts with the provider of construction services for construction of the project. This bill authorizes DOT to enter into no more than three design contracts utilizing the construction manager-general contractor process no later than July 1, 2021.

Under current law, DOT may engage engineering, consulting, surveying, or other specialized services and this engagement of services is exempt from certain provisions of law relating to state procurement. For an engagement of services of more than \$300,000, DOT must conduct a uniform cost-benefit analysis before the engagement and must review periodically, and before any renewal, the continued appropriateness of the engagement. Under this bill, when DOT conducts a cost-benefit analysis under this provision, DOT must also consider and document the results of the analysis before determining whether to undertake the proposed engagement.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 13.489 (3) of the statutes is amended to read:

2 13.489 (3) ASSISTANCE TO COMMISSION. (a) The department of transportation
3 shall assist the commission in the performance of its duties.

4 (b) 1. The department of transportation shall, when requested by the
5 commission, make or cause to be made such any studies and cost estimates with
6 respect to any proposed project as that are necessary to permit the commission to
7 consider the project.

8 3. The costs of such studies under this paragraph shall be charged to the
9 appropriate program appropriation under s. 20.395.

10 **SECTION 2.** 13.489 (3) (b) 2. of the statutes is created to read:

11 13.489 (3) (b) 2. When the department provides a full project cost estimate
12 under this paragraph, the estimate shall include all costs associated with the project,
13 including all costs before enumeration, design engineering and construction
14 engineering costs, the costs of environmental studies, and costs of the project that are

1 paid by another program of the department. A full project cost estimate under this
2 paragraph shall include the expected date of completion and an estimate of the
3 effects of construction cost inflation and unexpected costs on the cost of the project.

4 **SECTION 3.** 13.489 (5) (a) 3. of the statutes is created to read:

5 13.489 (5) (a) 3. For each project specified under subd. 1., identifies the full
6 project cost estimate of the project made for the commission as of the date of the
7 commission's approval of the project.

8 **SECTION 4.** 13.489 (5) (am) of the statutes is created to read:

9 13.489 (5) (am) The report under par. (a) shall treat separately and as described
10 in the enumerating statute each project enumerated under s. 84.013 (3) or 84.0145
11 (3) (b) and shall treat separately each project approved under s. 84.013 (6).

12 **SECTION 5.** 84.01 (13) of the statutes is amended to read:

13 84.01 (13) **ENGINEERING SERVICES.** The department may engage such
14 engineering, consulting, surveying, or other specialized services as it deems
15 advisable. Any engagement of services under this subsection is exempt from ss.
16 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
17 16.754 apply to such engagement. Any engagement involving an expenditure of
18 \$3,000 or more shall be by formal contract approved by the governor. The
19 department shall conduct a uniform cost-benefit analysis, as defined in s. 16.70 (3g),
20 of each proposed engagement under this subsection that involves an estimated
21 expenditure of more than \$300,000 in accordance with standards prescribed by rule
22 of the department and consider and document the results of the analysis before the
23 determination of whether to undertake the proposed engagement. The department
24 shall review periodically, and before any renewal, the continued appropriateness of

1 contracting pursuant to each engagement under this subsection that involves an
2 estimated expenditure of more than \$300,000.

3 **SECTION 6.** 84.013 (1m) of the statutes is created to read:

4 84.013 (1m) (a) Annually no later than February 1, the department shall
5 prepare and submit under s. 13.172 (3) to the joint committee on finance, the joint
6 legislative audit committee, and the standing committees of the legislature with
7 jurisdiction over transportation matters a report that provides all of the following
8 information for each project enumerated under s. 84.013 (3) or 84.0145 (3) (b) or
9 approved under s. 84.013 (6):

10 1. The full project cost estimate, as established under s. 13.489 (3) (b) 2., of the
11 project as of the date of enumeration.

12 2. The year in which the department expects to complete the project as of the
13 date of enumeration.

14 3. The costs incurred as of the date of preparation of the report.

15 4. The full project cost estimate, as established under s. 13.489 (3) (b) 2., of the
16 project as of the date of preparation of the report.

17 5. The year in which the department expects to complete the project as of the
18 date of preparation of the report.

19 6. An explanation of any difference between the full project cost estimates
20 under subds. 1. and 4. that has not been addressed in a previous report under this
21 paragraph.

22 7. The opinion of the department as to whether the project will be completed
23 as originally scheduled without the allocation of additional funds.

1 (b) The report under par. (a) shall treat separately and as described in the
2 enumerating statute each project enumerated under s. 84.013 (3) or 84.0145 (3) (b)
3 and shall treat separately each project approved under s. 84.013 (6).

4 **SECTION 7.** 84.06 (1) (a) of the statutes is renumbered 84.06 (1) (am).

5 **SECTION 8.** 84.06 (1) (ag) of the statutes is created to read:

6 84.06 (1) (ag) "Construction manager" means a person in the business of
7 providing construction services that is also qualified to supervise, manage, or
8 otherwise participate in the engineering, design, or construction work for an
9 improvement project.

10 **SECTION 9.** 84.06 (1) (aj) of the statutes is created to read:

11 84.06 (1) (aj) "Construction manager-general contractor contract" means a
12 contract for an improvement project awarded under sub. (2m).

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

14 84.06 (2) (a) All such highway improvements shall be executed by contract
15 based on bids unless the department finds that another method as provided in sub.
16 (2m), (3), or (4) would be more feasible and advantageous. Bids shall be advertised
17 for in the manner determined by the department. Except as provided in s. 84.075,
18 the contract shall be awarded to the lowest competent and responsible bidder as
19 determined by the department. If the bid of the lowest competent bidder is
20 determined by the department to be in excess of the estimated reasonable value of
21 the work or not in the public interest, all bids may be rejected. The department shall,
22 so far as reasonable, follow uniform methods of advertising for bids and may
23 prescribe and require uniform forms of bids and contracts. Except as provided in par.
24 (b), the secretary shall enter into the contract on behalf of the state. Every such
25 contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.82, 16.87 and 16.89, but

1 ss. 16.528, 16.752, 16.753, and 16.754 apply to the contract. Any such contract
2 involving an expenditure of \$1,000 or more shall not be valid until approved by the
3 governor. The secretary may require the attorney general to examine any contract
4 and any bond submitted in connection with the contract and report on its sufficiency
5 of form and execution. The bond required by s. 779.14 (1m) is exempt from approval
6 by the governor and shall be subject to approval by the secretary. This subsection
7 also applies to contracts with private contractors based on bids for maintenance
8 under s. 84.07.

9 **SECTION 11.** 84.06 (2m) of the statutes is created to read:

10 **84.06 (2m) CONSTRUCTION MANAGER-GENERAL CONTRACTOR PROCESS.** (a) If the
11 department finds that it would be more feasible and advantageous, the department
12 may, prior to July 1, 2021, award a 2-phase construction manager-general
13 contractor contract to a construction manager for preconstruction and construction
14 services for an improvement project.

15 (b) For the design and engineering phase, the department may award a
16 construction manager-general contractor contract to a construction manager based
17 on qualifications, experience, best value, or any other combination of factors the
18 department considers appropriate.

19 (c) Before the project design is 90 percent complete, the construction manager
20 shall provide to the department a proposal for the construction manager to construct
21 the project. The proposal shall certify that at least 30 percent of the work for the
22 construction phase shall be performed by the construction manager.

23 (d) The department shall obtain an independent cost estimate for the
24 construction of the project.

25 (e) For the construction phase, the department may do any of the following:

1 1. Enter into a construction contract with the construction manager pursuant
2 to a proposal under par. (c).

3 2. Award the construction contract in accordance with sub. (2).

4 (f) The department may utilize a construction manager-general contractor
5 contract for no more than 3 highway improvement projects.

6 **SECTION 12.** 779.14 (1) (b) of the statutes is amended to read:

7 779.14 (1) (b) With respect to contracts entered into under s. 84.06 (2) or (2m)
8 for highway improvements, any person who has a direct contractual relationship,
9 expressed or implied, with the prime contractor to perform, furnish, or procure labor,
10 services, materials, plans, or specifications.

11 **SECTION 13.** 779.14 (2) (a) 3. of the statutes is amended to read:

12 779.14 (2) (a) 3. With respect to contracts entered into under s. 84.06 (2) or (2m)
13 for highway improvements, failure of the prime contractor to comply with a contract,
14 whether express or implied, with a subcontractor, supplier, or service provider of the
15 prime contractor for performing, furnishing, or procuring labor, services, materials,
16 plans, or specifications for the purpose of making the highway improvement that is
17 the subject of the contract with the governmental entity.

18 **SECTION 14.** 895.56 (2) (a) of the statutes is amended to read:

19 895.56 (2) (a) The acts or omissions by the person occurred while performing
20 a contract entered into under s. 84.06 (2) or (2m), including acts or omissions by any
21 person who has a direct contractual relationship with the prime contractor, as
22 defined in s. 779.01 (2) (d), under a contract entered into under s. 84.06 (2) or (2m)
23 to perform labor or furnish materials.

24 **SECTION 15.** 895.56 (2) (c) of the statutes is amended to read:

Kohn, Hanna

From: Mugnaini, Jason
Sent: Wednesday, February 22, 2017 11:18 AM
To: LRB.Legal
Subject: Draft Review: LRB -1852/1

Please Jacket LRB -1852/1 for the SENATE.