



## Fiscal Estimate Narratives

DOA 2/1/2024

LRB Number	23-2491/1	Introduction Number	AB-0956	Estimate Type	Original
<b>Description</b> modifications to building program project budgets, selection of project architects and engineers, single prime contracting, agency cooperation with energy conservation contractors, timeline for claims before the Claims Board, and making a transfer to the state building trust fund					

### Assumptions Used in Arriving at Fiscal Estimate

Assembly Bill 956 (AB 956) would: modify several State Building Program (SBP) processes and procedures, direct the usage of energy service company pilot projects, transfer funding from the General Fund to the State Building Trust Fund (BTF), and modify the required timeline for claims associated with State construction projects brought before the Claims Board.

The State Building Commission (SBC) is responsible for implementing SBP which is authorized in the State biennial capital budget. The Department of Administration's (Department) Division of Facilities Development (DFD), within the framework and processes delineated by SBC as implemented by SBP, is responsible for project management for State and University of Wisconsin (UW) System facilities construction projects, throughout the project lifecycle phases (i.e., project initiation, planning and design, bidding, construction, and capital maintenance).

DFD activities are funded under s. 20.505 (1) (kc), Wis. Stats., Capital planning and building construction services, appropriation numeric 135, an annual appropriation consisting of moneys received for the provision of construction and capital planning services on behalf of state agencies.

#### Modifications to Building Program Project Budgets

Under the proposed bill, SBC may not increase the budget of a project enumerated in SBP by more than 10.0 %, except for those funded solely from program revenue, gifts, grants, other receipts, or federal funds, without submitting the proposed project budget increase for approval by the Joint Committee on Finance (JFC) under passive review. The Department would also be required to submit a quarterly report to JFC to: 1) identify each SBC-approved project that had approved budget increases under the amended authorization under s. 20.924 (1) (d), Wis. Stats., and 2) for each enumerated project in SBP where a budget increase is anticipated to be needed, except for those funded solely from program revenue, gifts, grants, other receipts, or federal funds, include a description of the project and the reasons for the project budget shortfall.

The Department is not able to readily estimate the number of projects currently enumerated in SBP that have, or are anticipated to have, budgets that need to be increased by greater than 10.0%. This information is typically identified once the preliminary design of a project is complete and a budget estimate has been received by the Architect/Engineer of record or when the Department has bids in hand from a public bid opening. Therefore, the Department is not able to approximate in advance the number of projects and frequency under which projects would need to be submitted to JFC for passive approval.

When there would be an occurrence of a project budget needing to be increased by 10.0% and requiring JFC passive approval in addition to the SBC approval, this would result in a minimum 14 working day delay of the approval of the necessary budget increase, which is anticipated to impact the timely and successful completion of projects and would result in increased project costs. With a delay in approval, there would be a potential need to rebid projects due to occurrences of contractors holding their bids past contract terms and statutory deadlines, which may result in higher contract prices.

This delay for passive approval would also place a burden on contractors, impeding their mobilization and continuation of projects, which may result in delays in the procurement of materials in tight supply chains and cause for a potential conflict in contractor workforce commitments and a resulting potential shortage of project support.

Any disruption in the approval process may not only compromise the efficiency of project execution but also jeopardize the timely delivery of critical milestones. Construction delays may lead to increased costs, potential contractor disputes, and a failure to meet project deadlines. Circumstances under which a request for a budget increase is not passively approved, and approval is provided following a hearing, would further exacerbate the

project management issues outlined above.

If JFC were to deny a budget increase, projects would not have the funds necessary to be successfully completed as initially scoped. Contractors, operating outside of contracts for which they bid, would face an immediate disruption to project mobilization, which would limit the ability of adherence to project timelines.

A process would need to be devised to manage the de-scoping of approved program components, which may impact agencies' abilities to operate within a facility that meets their operational and safety needs. This process would need to be determined and would involve a reassessment and reduction of project components, which DFD anticipates would cause for re-bidding of projects under the reduced scope.

The project rescoping administration would cause cost-sensitive construction delays and potentially reduce the ability to make project deadlines. Additional DFD staff efforts and design services would be required for any necessary redesign of the bidding documents.

While the fiscal impact of the proposed budget review process is not able to be determined at this time, the aforementioned impacts are anticipated to potentially be significant.

The administrative effort that would be required by DFD to complete the quarterly reporting to JFC is anticipated to be absorbable through workload reprioritization under current existing position and expenditure authority.

#### Selection of Project Architects and Engineers

AB 956 would amend s. 16.867 (2), Wis. Stats., which would require selection committees established and supervised by the Department for each construction project under s. 15.04(1)(c), Wis. Stats., to use a request-for-proposal process established by the Department to select an architect or engineer for the project based on qualifications, if the estimated cost of a construction project is \$15,000,000 or more. Under current law, selection committees must follow a request-for-proposal process for projects estimated at \$7,400,000 or more.

Additionally, AB 956 would create s. 16.867 (3), Wis. Stats., which would prohibit selection committees established for construction projects under s. 15.04 (1) (c), Wis. Stats., from refusing to select an architect or engineer for a construction project that has an estimated cost of less than \$2,000,000 on the basis that the firm in question operates with only one responsible architect and engineer; the Department may increase the threshold under this subsection as necessary, but may not exceed \$15,000,000.

Adm 20.02 (6) (a) of the Wisconsin Administrative Code requires there to be "more than one architect/engineer as a responsible member of the firm" for it to be considered an eligible architect/engineer. AB 956 would therefore supersede this requirement in cases where the project is estimated at less than \$15,000,000.

The Department anticipates that, while the proposed change would modify criteria used by selection committees, it would not require additional staff resources or present any direct costs to the Department to carry out selections, and thus no fiscal impact is anticipated to the Department.

With the proposed changes to acceptable selection criteria, there is the potential for additional risk if a firm selected with only one responsible architect/engineer does not have sufficient staffing to undertake a project's scope of work, and, as a result, the contract would need to be extended or rebid for, leading to additional costs and project delays. Such costs would be incurred by SBC and would not impact the Department's operating expenditures.

#### Single Prime Contracting

Under the proposed bill, for any SBC project costing \$200,000,000 or more, an agency with the associated project may request that SBC waive the requirements for single prime contracting, wherein only a general prime contractor has a contractual relationship with the State and all mechanical, electrical, or plumbing subcontractors are identified by the Department or the Board of Regents and are subcontractors to the general prime contractor.

The 2023-25 capital budget contained three projects that cost more than \$200,000,000 where the agencies associated with these projects would be eligible to request a waiver. However, the average number of potential projects eligible for the waiver in the future is not able to be anticipated, nor is the number of agencies that would request the single prime contracting waiver.

The Department currently has the ability under s. 13.48 (19) (a), Wis. Stats., for agencies to obtain waivers as approved by SBC from single prime contracting. It is anticipated that while the proposed process may streamline waiver approvals with the removal of SBC approvals, a significant impact to the Department is not anticipated due to current allowance in statute, and only minor absorbable administrative adjustments are

anticipated.

#### Certain Project Bidding Procedures

AB 956 would permit at any time more than two days before the end of a bidding period that a bidder may submit a question to the Department concerning a project. The proposed bill would also permit the Department to issue an addendum at any time during the bidding period to clarify the drawings and specifications for the bid or to extend the period of bidding.

It is currently established by SBP, as specified in bidding instruction documents, that questions from bidders or potential bidders may be posed up to day 35 of the 45-day bidding period. This timeline is set such that in the event there are revisions needed to bid document materials, there is time for DFD to efficiently modify the documents and there is sufficient time for bidders to have similar access, and equal opportunity to review, the same bid materials.

Under AB 956, extending the amount of time bidders would have to ask questions to up to two days before the end of the bidding period is anticipated to impact DFD processes, procedures, and staff workload. If questions were received nearer to the end of the bid or the number of questions were to increase due to the additional time for bidders/potential bidders to pose questions, an increase in the volume of questions to be addressed and of bid materials to be revised is anticipated, as is the frequency for revisions under insufficient timelines.

Additional DFD staff efforts would be necessary to facilitate and address any additional questions with the Architect-Engineer of record and to develop and issue revised bidding documents. This additional time anticipated to be required in responding to questions would increase DFD's workload.

DFD may have insufficient time to revise materials which would in turn cause all bidders to have an insufficient opportunity to review final, complete, and corrected materials before the close of the bid.

However, the Department also anticipates the opportunity for DFD to respond to additional questions or to correct bid materials may partially offset this initial additional time commitment. This would allow for increased quality, accuracy, and completeness of the bid materials provided and bid proposals received, may reduce the DFD staff time necessary after the end of the bidding period, and may result in more successful bids.

The net impact on DFD's staffing workload is indeterminate and its ability to absorb under current existing position and expenditure authority would depend upon the occurrences of the aforementioned circumstances.

#### Cooperation with Energy Conservation Contractors

The proposed bill would require the Department and the Board of Regents to collaborate with energy service companies on the development and execution of pilot projects under this section using financing provided by the companies.

The proposed bill would contribute to the physical improvement of facilities and could promote long-term financial savings through reduced maintenance costs and increased energy efficiency.

DFD currently participates in a program aligned with the Governor's priorities for energy conservation. This ongoing initiative encompasses a range of projects aimed at upgrading facilities, reducing maintenance requirements, and enhancing overall sustainability with financing paid with state funds.

The Department would need to determine with UW its role and responsibility to adhere to the proposed provision, which once determined would dictate the impact to DFD and SBC. For instance, if DFD were responsible for facilitating and issuing terms and conditions and managing the associated contracts, the Department anticipates that there may be a fiscal impact, the extent of which is indeterminate. The Department and SBC would also need to establish a procedure to utilize and manage financing provided by the identified companies.

#### Utilities Costs

The proposed bill would create s. 16.899, Wis. Stats., which would require each state contract for construction work must state which party to the contract is responsible for paying project utility service connection charges and which party is responsible for paying for costs related to the consumption of utility services at the project site.

Under the proposed bill, the Architect/Engineer (A/E) of record would need to collaborate with the agency to determine who would bear the utility costs. Consequently, the bidding documents would be updated to include this provision. This is anticipated to create transparency and accountability in managing utility costs for state construction projects and no fiscal impact is currently anticipated to the Department.

### Claims Board Timelines

The proposed bill would require the Claims Board (Board) to provide claim determinations within six months of their referrals to the Board for those associated with contracts with the Department of Transportation (DOT) or with the Department or Board of Regents for infrastructure improvements or construction projects, respectively. If the Board does not make a final determination within the six-month timeframe, the claimant can proceed with action against the state as provided under current law.

The Board is attached to the Department and is responsible for considering and making recommendations on claims brought against State of Wisconsin Agencies. The Board would intend to adhere to the sixth month timeline for the pertaining claims and therefore would develop an administrative process to identify and proceed with this subset of claims accordingly. Although there is not an estimate readily available of the time it currently takes the Board from referral to final determination to process these types of claims, it is anticipated, based upon the current volume of claims, that it would generally be able to adhere to this timeline for making determinations through modified administrative management efforts.

In the event a determination is not made within the required timeframe by the Board, it would lose the ability to make a recommendation to the Legislature for the payment amount or to be able to pay the claim directly (which is anticipated to be an infrequent occurrence due to the \$10,000 maximum direct payment amount permitted for the Board and the typically high dollar amounts associated with the pertaining contracts).

### Transfer to the Building Trust Fund

The proposed bill would transfer \$32,000,000 from the general fund to the building trust fund in fiscal year 2023-24.

The proposed transfer was anticipated in 2023 Act 19 to provide funding for anticipated costs of A/E pre-design projects for 2023-25 and 2025-27 biennial capital budgets. These costs can vary depending on the scale and complexity of the projects, market rates for services, and specific requirements or constraints of the owner agency. The need for additional BTF funding to support upcoming projects for the current and next biennium was anticipated to far exceed the balance in the BTF account and the amounts available for transfer from DFD cash balance. The intent was to provide state agencies and the SBC with a source of cash to move proposed projects into the design stage and prepare appropriate scopes, schedules, and budgets for future enumeration.

The transfer would reflect only the costs of A/E pre-design services across multiple projects. These services are crucial in the early stages of project planning and development, helping to define the project's scope, schedule, and budget. The allocation of these funds is intended to support the necessary pre-design work for each project, ensuring that they are adequately prepared for enumeration in the upcoming biennium. As stated above, as it was anticipated in the biennial budget, the transfer would fund the A/E pre-design services over the 2023-25 and 2025-27 biennium. This funding would enable the necessary pre-design work to be carried out for the projects proposed in these periods, providing a more realistic basis for the SBC and the Legislature to evaluate project enumeration. The exact timeline for the expenditure of these funds would depend on the specific requirements and schedules of the individual projects.

### Long-Range Fiscal Implications