



2005 ASSEMBLY BILL 940

January 24, 2006 - Introduced by Representatives BERCEAU, BLACK, ALBERS, MUSSER, MOLEPSKE, COLON, BOYLE, ZEPNICK, GRIGSBY and NELSON. Referred to Committee on State Affairs.

1 **AN ACT to amend** 16.705 (1), 16.75 (1) (a) 1., 16.75 (6) (bm), 16.75 (6) (e), 23.41
2 (5), 25.18 (1) (a), 25.18 (1) (f), 25.18 (1) (m), 84.01 (13), 84.06 (2) (a), 84.06 (3),
3 84.06 (4), 85.015, 102.81 (2), 221.0903 (4) (b) and 655.27 (2); and **to create** 15.07
4 (1) (a) 7., 15.07 (5) (zm), 15.55, 16.705 (5m) and 20.240 of the statutes; **relating**
5 **to:** review of certain proposed state contractual service engagements and
6 creation of a contract review board.

Analysis by the Legislative Reference Bureau

Currently, the Department of Administration (DOA) and those executive branch agencies to which DOA delegates purchasing authority may enter into contracts for contractual services if the services can be performed more economically or efficiently by contract than through the use of state employees. This bill provides that DOA and its agents may enter into contracts for contractual services only if the services can be performed more economically by contract than through the use of state employees.

Currently, before a vendor is engaged to perform services that are currently being performed by represented state employees, the decision to contract for the services must first be bargained collectively in good faith by the state with the certified representative of the employees to the point of impasse. If no agreement is reached, the state may proceed to contract for the services. In addition, with certain exceptions, any proposal to engage a person to perform contractual services for a

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state agency must first be submitted to DOA for review and approval. The agency requesting approval of a proposed engagement must submit written justification for the proposal which must include justification of need, justification for not contracting with other state agencies, a specific description of the scope of the services to be performed by contract, and justification for the procurement process if a process other than competitive bidding is to be used. In addition, certain proposed contracts for contractual services must be reviewed by the director of the Office of State Employment Relations in DOA in order to ensure that the contracting agency properly utilizes the services of state employees, evaluates the feasibility of using limited-term appointments prior to entering into the contract, and does not enter into a contract that would conflict with an existing collective bargaining agreement.

This bill provides, in addition to these requirements, with certain exceptions, that each proposed engagement to perform services for an executive branch state agency must be submitted for prior review and approval of a contract review board that is created by the bill. The board consists of seven members serving for two-year terms. Two of the members are appointed by the governor, one of whom must be a representative of an organization that is certified by the Wisconsin Employment Relations Commission to represent state employees, if any. In addition, one member each is appointed by the speaker of the assembly, the minority leader of the assembly, the president of the senate, the senate minority leader, and the director of the Office of State Employment Relations in DOA.

Under the bill, the review requirement applies only if DOA or an agency to which DOA has delegated contracting authority determines that the proposed engagement will result in the net reduction of at least one full-time equivalent state position. The bill requires an agency to provide the board with certain information to be used in conducting its review. The board must approve the proposed engagement if it determines that the proposed engagement is consistent with state law and that the quality of services and cost benefits resulting from the engagement are greater than the quality of services and cost benefits to the state resulting from performance of the services by state employees. The board must exclude any savings resulting from replacement of state employees by nonstate personnel who are younger in age than the state employees.

The review requirements do not apply to a proposed engagement that has been bargained collectively with the certified representative for each state position the majority of whose duties will be displaced under the engagement if the representative agrees to the engagement. The review requirements do not apply to renewal of an existing contractual services agreement upon substantially the same terms and conditions, plus reasonable price adjustments necessitated by actual cost increases. Under the bill, decisions of the Contract Review Board may be appealed under the State Administrative Procedure Act and are subject to judicial review.

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For further information see the *state* 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.** 15.07 (1) (a) 7. of the statutes is created to read:

2 15.07 (1) (a) 7. Members of the contract review board shall be appointed as
3 provided in s. 15.55.

4 **SECTION 2.** 15.07 (5) (zm) of the statutes is created to read:

5 15.07 (5) (zm) Members of the contract review board, \$25 per day.

6 **SECTION 3.** 15.55 of the statutes is created to read:

7 **15.55 Contract review board; creation.** There is created a contract review
8 board consisting of 7 members serving for 2-year terms. Two of the members shall
9 be appointed by the governor, of whom one shall be a representative of an
10 organization that is certified to represent employees under such. V of ch. 111, if any;
11 one member shall be appointed by the director of the office of state employment
12 relations in the department of administration; one member shall be appointed by the
13 speaker of the assembly; one member shall be appointed by the minority leader of
14 the assembly; one member shall be appointed by the president of the senate; and one
15 member shall be appointed by the minority leader of the senate.

16 **SECTION 4.** 16.705 (1) of the statutes, as affected by 2005 Wisconsin Act
17 (Assembly Bill 105), is amended to read:

18 16.705 (1) The Subject to approval under sub. (5m) whenever required, the
19 department or its agents may contract for services which can be performed more
20 economically ~~or efficiently~~ by such contract. The department shall, by rule, prescribe

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1 uniform procedures for determining whether services are appropriate for
2 contracting under this subsection.

3 **SECTION 5.** 16.705 (5m) of the statutes is created to read:

4 16.705 **(5m)** (a) Except as authorized in par. (e), after each proposed
5 engagement to perform contractual services is approved under sub. (2) and under
6 sub. (3), whenever required, if the department or another agency to whom the
7 department has delegated contracting authority under s. 16.71 (1) determines that
8 the proposed engagement will result in the net reduction of at least one full-time
9 equivalent position, or that the proposed engagement is a renewal of a previous
10 engagement that is not exempted under par. (f), the contracting agency shall not
11 solicit bids or competitive sealed proposals and shall not enter into any contract to
12 perform those services until the agency submits the proposed solicitation, or if there
13 is to be no solicitation, the proposed contract for review of the contract review board
14 and the board approves the proposed engagement.

15 (b) The agency shall provide the contract review board with all information
16 required by the board to determine whether the proposed solicitation or contract
17 should be approved. The information shall include a comprehensive analysis, in the
18 form prescribed by the contract review board, of the costs and benefits of replacing
19 one or more state positions with services performed by contract.

20 (c) The contract review board shall approve the proposed solicitation or
21 contract if the board determines that the proposed contracting is consistent with
22 state law and that the quality of services and the cost benefits to the state of
23 contracting for services are greater than the quality of services and cost benefits
24 resulting from performance of the services by state employees. If the board
25 determines that the quality of services and cost benefits to the state of contracting

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1 for services are substantially equivalent to the quality of services and cost benefits
2 to the state resulting from performance of the services by state employees, the board
3 shall disapprove the proposed solicitation or contract.

4 (d) In determining the cost benefits to the state that will result from
5 replacement of one or more net full-time equivalent positions with contractual
6 services under par. (c), the contract review board shall exclude any savings resulting
7 from replacement of state employees who occupy the positions to be replaced with
8 nonstate personnel who are younger in age than those state employees. The contract
9 review board may request information from any proposed vendor concerning the
10 ages of the personnel who will be performing services under any proposed
11 contractual services contract. The contract review board may also request
12 information from any agency for which contractual services will be performed under
13 a proposed solicitation or contract concerning any employees of the agency the
14 majority of whose time would be spent performing services required under the
15 proposed solicitation or contract if no engagement occurs. Each agency shall provide
16 the information requested by the contract review board under this paragraph. No
17 agency may enter into a contract with any vendor who fails to provide complete
18 information to the contract review board pursuant to an authorized request under
19 this paragraph.

20 (e) Paragraph (a) does not apply to a proposed solicitation or contract that has
21 been bargained collectively with the certified representative for each state position
22 the majority of whose duties will be displaced under the proposed solicitation or
23 contract and with respect to which the representative has agreed in writing to the
24 proposed solicitation or contract.

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1 (f) Paragraph (a) does not apply to any proposed solicitation or contract to
2 renew an existing contractual services contract under substantially the same terms
3 and conditions, plus reasonable price adjustments necessitated by actual cost
4 increases.

5 (g) Any aggrieved person may appeal a decision of the contract review board
6 and the appeal shall be treated as a contested case under ch. 227.

7 **SECTION 6.** 16.75 (1) (a) 1. of the statutes, as affected by 2005 Wisconsin Act 25,
8 is amended to read:

9 16.75 (1) (a) 1. All orders awarded or contracts made by the department for all
10 materials, supplies, equipment, and contractual services to be provided to any
11 agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3t),
12 (6), (7), (8), (9), and (10m) and ss. 16.705 (5m), 16.73 (4) (a), 16.751, 16.754, 50.05 (7)
13 (f), 153.05 (2m) (a), 287.15 (7), and 301.265, shall be awarded to the lowest
14 responsible bidder, taking into consideration life cycle cost estimates under sub.
15 (1m), when appropriate, the location of the agency, the quantities of the articles to
16 be supplied, their conformity with the specifications, and the purposes for which they
17 are required and the date of delivery.

18 **SECTION 7.** 16.75 (6) (bm) of the statutes is amended to read:

19 16.75 (6) (bm) If the secretary determines that it is in the best interest of this
20 state to do so, he or she may waive any requirement under subs. (1) to (5) and ss.
21 16.705 and 16.72 (2) (e) and (f) and (5) except s. 16.705 (5m) with respect to any
22 contract entered into by the department of workforce development under s. 49.143,
23 if the department of workforce development presents the secretary with a process for
24 the procurement of contracts under s. 49.143 and the secretary approves the process.

25 **SECTION 8.** 16.75 (6) (e) of the statutes is amended to read:

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1 16.75 (6) (e) The governor or his or her designee may waive any requirement
2 of this subchapter if the governor or his or her designee finds that there exists an
3 emergency which threatens the public health, safety or welfare and the waiver is
4 necessary to meet the emergency. The governor or his or her designee shall require
5 the award of each contract under this paragraph to be made with such competition
6 as is practicable under the circumstances. The governor or his or her designee shall
7 file with the department a statement of facts constituting the emergency for each
8 waiver issued under this paragraph, and a statement of the basis for selection of each
9 contractor under the emergency procedure. This paragraph does not apply to the
10 ~~requirement~~ requirements specified in sub. (7) and s. 16.705 (5m).

11 **SECTION 9.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
12 the following amounts for the purposes indicated:

	2005-06	2006-07
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14 **20.240 Contract review board**

15 (1) REVIEW OF STATE CONTRACTUAL SERVICES
16 AGREEMENTS

(a) General program operations	GPR	A	-0-	-0-
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18 **SECTION 10.** 20.240 of the statutes is created to read:

19 **20.240 Contract review board.** There is appropriated to the contract review
20 board for the following program:

21 (1) REVIEW OF STATE CONTRACTUAL SERVICES AGREEMENTS. (a) *General program*
22 *operations.* The amounts in the schedule for the general program operations of the
23 contract review board.

24 **SECTION 11.** 23.41 (5) of the statutes is amended to read:

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1 23.41 (5) Each contract for construction work entered into by the department
2 under this section shall be awarded on the basis of bids or competitive sealed
3 proposals in accordance with procedures established by the department. Each
4 contract for construction work shall be awarded to the lowest responsible bidder or
5 the person submitting the most advantageous competitive sealed proposal as
6 determined by the department. If the bid of the lowest responsible bidder or the
7 proposal of the person submitting the most advantageous competitive sealed
8 proposal is determined by the department to be in excess of the estimated reasonable
9 value of the work or not in the public interest, the department may reject all bids or
10 competitive sealed proposals. Every such contract is exempted from ss. 16.70 to
11 16.705 (5), 16.705 (6) to 16.75, 16.755, 16.76, 16.767 to 16.77, 16.78 to 16.82, 16.855,
12 16.87, and 16.89, but ss. 16.705 (5m), 16.528, 16.754, and 16.765 apply to the
13 contract. Every such contract involving an expenditure of more than \$60,000 is not
14 valid until the contract is approved by the governor.

15 **SECTION 12.** 25.18 (1) (a) of the statutes is amended to read:

16 25.18 (1) (a) Notwithstanding s. 20.930 and all provisions of subch. IV of ch.
17 16 and s. 20.930, except s. 16.705 (5m), employ special legal or investment counsel
18 in any matters arising out of the scope of its investment authority. The employment
19 of special legal counsel shall be with the advice and consent of the attorney general
20 whenever such special counsel is to be compensated by the board. Any expense of
21 counsel so employed shall be borne by the fund for which the services shall be
22 furnished.

23 **SECTION 13.** 25.18 (1) (f) of the statutes is amended to read:

24 25.18 (1) (f) Maintain and repair any building or other structure or premises
25 which it owns in fee or in which it owns the beneficial interest and, notwithstanding

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1 all provisions of subch. IV or V of ch. 16, except s. 16.705 (5m), it shall have exclusive
2 authority to make such agreements and enter into such contracts as it deems
3 necessary for such purpose. All noncapital costs under this paragraph shall be
4 charged to the current income accounts of the funds having an interest in the
5 building, structure or premises.

6 **SECTION 14.** 25.18 (1) (m) of the statutes is amended to read:

7 25.18 (1) (m) Notwithstanding all provisions of subchs. IV and V of ch. 16,
8 except s. 16.705 (5m), employ professionals, contractors or other agents necessary to
9 evaluate or operate any property if a fund managed by the board has an interest in,
10 or is considering purchasing or lending money based upon the value of, that property.
11 Costs under this paragraph shall be paid by the fund and charged to the appropriate
12 account under s. 40.04 (3).

13 **SECTION 15.** 84.01 (13) of the statutes, as affected by 2005 Wisconsin Act ...
14 (Assembly Bill 105), is amended to read:

15 84.01 (13) ENGINEERING SERVICES. The department may engage such
16 engineering, consulting, surveying, or other specialized services as it deems
17 advisable. Any engagement of services under this subsection is exempt from ss.
18 16.70 to 16.705 (5), 16.705 (6) to 16.75, 16.755 to 16.82, and 16.85 to 16.89, but ss.
19 16.528, 16.705 (5m), 16.752, and 16.754 apply to such engagement. Any engagement
20 involving an expenditure of \$3,000 or more shall be by formal contract approved by
21 the governor. The department shall conduct a uniform cost-benefit analysis, as
22 defined in s. 16.70 (3g), of each proposed engagement under this subsection that
23 involves an estimated expenditure of more than \$25,000 in accordance with
24 standards prescribed by rule of the department. The department shall review
25 periodically, and before any renewal, the continued appropriateness of contracting

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

3 **SECTION 16.** 84.06 (2) (a) of the statutes is amended to read:

4 84.06 (2) (a) All such highway improvements shall be executed by contract
5 based on bids unless the department finds that another method as provided in sub.
6 (3) or (4) would be more feasible and advantageous. Bids shall be advertised for in
7 the manner determined by the department. Except as provided in s. 84.075, the
8 contract shall be awarded to the lowest competent and responsible bidder as
9 determined by the department. If the bid of the lowest competent bidder is
10 determined by the department to be in excess of the estimated reasonable value of
11 the work or not in the public interest, all bids may be rejected. The department shall,
12 so far as reasonable, follow uniform methods of advertising for bids and may
13 prescribe and require uniform forms of bids and contracts. Except as provided in par.
14 (b), the secretary shall enter into the contract on behalf of the state. Every such
15 contract is exempted from ss. 16.70 to 16.705 (5), 16.705 (6) to 16.75, 16.755 to 16.82,
16 16.87 and 16.89, but ss. 16.528, 16.705 (5m), 16.752, and 16.754 apply to the contract.
17 Any such contract involving an expenditure of \$1,000 or more shall not be valid until
18 approved by the governor. The secretary may require the attorney general to
19 examine any contract and any bond submitted in connection with the contract and
20 report on its sufficiency of form and execution. The bond required by s. 779.14 (1m)
21 is exempt from approval by the governor and shall be subject to approval by the
22 secretary. This subsection also applies to contracts with private contractors based
23 on bids for maintenance under s. 84.07.

24 **SECTION 17.** 84.06 (3) of the statutes is amended to read:

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1 84.06 (3) CONTRACTS WITH COUNTY OR MUNICIPALITY; DIRECT LABOR; MATERIALS. If
2 the department finds that it would be more feasible and advantageous to have the
3 improvement performed by the county in which the proposed improvement is located
4 and without bids, the department may, by arrangement with the county highway
5 committee of the county, enter into a contract satisfactory to the department to have
6 the work done by the county forces and equipment. In such contract the department
7 may authorize the county to purchase, deliver, and store materials and may fix the
8 rental rates of small tools and equipment. The contract shall be between the county
9 and the state and shall not be based on bids, and may be entered into on behalf of the
10 county by the county highway committee and on behalf of the state by the secretary.
11 Such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230,
12 except ~~s.~~ ss. 16.705 (5m) and 16.754. If the total estimated indebtedness to be
13 incurred exceeds \$5,000 the contract shall not be valid until approved by the
14 governor. The provisions of this subsection relating to agreements between a county
15 and the state shall also authorize and apply to such arrangements between a city,
16 town, or a village and the state. In such cases, the governing body of the city, town,
17 or village shall enter into the agreement on behalf of the municipality.

18 **SECTION 18.** 84.06 (4) of the statutes is amended to read:

19 84.06 (4) SPECIAL CONTRACTS WITH RAILROADS AND UTILITIES. If an improvement
20 undertaken by the department will cross or affect the property or facilities of a
21 railroad or public utility company, the department may, upon finding that it is
22 feasible and advantageous to the state, arrange to perform portions of the
23 improvement work affecting such facilities or property or perform work of altering,
24 rearranging, or relocating such facilities by contract with the railroad or public
25 utility. Such contract shall be between the railroad company or public utility and the

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1 state and need not be based on bids. The contract may be entered into on behalf of
2 the state by the secretary. Every such contract is exempted from s. 779.14 and from
3 all provisions of chs. 16 and 230, except ss. 16.528, 16.705 (5m), 16.752, and 16.754.
4 No such contract in which the total estimated debt to be incurred exceeds \$5,000
5 shall be valid until approved by the governor. As used in this subsection, “public
6 utility” means the same as in s. 196.01 (5), and includes a telecommunications carrier
7 as defined in s. 196.01 (8m), and “railroad” means the same as in s. 195.02.
8 “Property” as used in this subsection includes but is not limited to tracks, trestles,
9 signals, grade crossings, rights-of-way, stations, pole lines, plants, substations, and
10 other facilities. Nothing in this subsection shall be construed to relieve any railroad
11 or public utility from any financial obligation, expense, duty, or responsibility
12 otherwise provided by law relative to such property.

13 **SECTION 19.** 85.015 of the statutes is amended to read:

14 **85.015 Transportation assistance contracts.** All contracts entered into
15 under this chapter to provide financial assistance in the areas of railroads, urban
16 mass transit, specialized transportation, and harbors are subject to ss. 16.528 and,
17 16.752, and 16.705 (5m) but are exempt from ss. 16.70 to 16.705 (5), 16.705 (6) to
18 16.75, 16.755 to 16.82, and 16.85 to 16.89.

19 **SECTION 20.** 102.81 (2) of the statutes is amended to read:

20 102.81 (2) The department may retain an insurance carrier or insurance
21 service organization to process, investigate and pay claims under this section and
22 may obtain excess or stop-loss reinsurance with an insurance carrier authorized to
23 do business in this state in an amount that the secretary determines is necessary for
24 the sound operation of the uninsured employers fund. In cases involving disputed
25 claims, the department may retain an attorney to represent the interests of the

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1 uninsured employers fund and to make appearances on behalf of the uninsured
2 employers fund in proceedings under ss. 102.16 to 102.29. Section 20.918 and all
3 provisions of subch. IV of ch. 16, except s. 16.705 (5m), do not apply to an attorney
4 hired under this subsection. The charges for the services retained under this
5 subsection shall be paid from the appropriation under s. 20.445 (1) (hp). The cost of
6 any reinsurance obtained under this subsection shall be paid from the appropriation
7 under s. 20.445 (1) (sm).

8 **SECTION 21.** 221.0903 (4) (b) of the statutes is amended to read:

9 221.0903 (4) (b) *Contracts for examination services.* The division may enter
10 into contracts with any bank supervisory agency with concurrent jurisdiction over
11 a state bank or an in-state branch of an out-of-state state bank to engage the
12 services of the agency's examiners at a reasonable rate of compensation, or to provide
13 the services of the division's examiners to the agency at a reasonable rate of
14 compensation. Contracts entered into under this paragraph are exempt from ss.
15 16.70 to 16.705 (5), 16.705 (6) to 16.76, and 16.767 to 16.82.

16 **SECTION 22.** 655.27 (2) of the statutes is amended to read:

17 655.27 (2) **FUND ADMINISTRATION AND OPERATION.** Management of the fund shall
18 be vested with the board of governors. The commissioner shall either provide staff
19 services necessary for the operation of the fund or, with the approval of the board of
20 governors, contract for all or part of these services. Such a contract is subject to s.
21 ss. 16.750 (5m) and 16.765, but is otherwise exempt from subch. IV of ch. 16. The
22 commissioner shall adopt rules governing the procedures for creating and
23 implementing these contracts before entering into the contracts. At least annually,
24 the contractor shall report to the commissioner and to the board of governors
25 regarding all expenses incurred and subcontracting arrangements. If the board of

