



Legislative Fiscal Bureau

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TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 956/Senate Bill 932: State Building Program Changes

Assembly Bill 956 (AB 956) and Senate Bill 932 (SB 932) are identical companion bills that would make various changes to the state building program, including involvement by the Joint Committee on Finance (JFC) in certain building program processes, and requirements related to construction contracts, the bidding process, and proposed changes to building projects. The bills also make certain changes related to the Claims Board process involving building and infrastructure projects.

AB 956 was introduced on January 16, 2024, and referred to the Assembly Committee on State Affairs. A public hearing was held on January 24, 2024. Assembly Amendment 1 (AA 1) to AB 956 was introduced on January 30, 2024. That Committee recommended passage of AB 956, as amended by AA 1, by a vote of 6 to 5 on January 31, 2024. AB 956 was referred to the Joint Committee on Finance on February 2, 2024.

SB 932 was introduced on January 19, 2024, and referred to the Senate Committee on Government Operations. Senate Amendment 1 (SA 1) to SB 932 was introduced on January 30, 2024. A public hearing was held on February 1, 2024. That Committee recommended passage of SB 932, as amended by SA 1, by a vote of 4 to 1 on February 6, 2024.

AB 956 and SB 932 are hereafter referred to as "the bill."

SUMMARY OF BILL

Transfer to the Building Trust Fund. The bill would transfer \$32 million from the general fund to the state building trust fund in 2023-24.

JFC Approval of Project Budget Increases. Current law provides the Building Commission with the authority to authorize limited changes to building project programs and budgets if the

Commission determines that unanticipated program or bidding conditions require the change to effectively and economically construct the project. However, total state funds for major projects under the authorized state building program for each agency cannot be exceeded.

The bill would prohibit the Building Commission from increasing the budget of any project enumerated in the authorized state building program by more than 10% without providing notice of the proposed increase to the Joint Committee on Finance, subject to a 14 working day passive review process.

Biennial and Quarterly Reports to JFC. Under current law, each state agency requesting projects in the state building program must submit a capital budget request to the Building Commission, generally in the fall of even-numbered years. The bill would require that each state agency also submit its capital budget request to the Joint Committee on Finance, in addition to reporting to the Building Commission.

In addition, the bill would require that a quarterly report be submitted to JFC and each voting member of the Building Commission no later than the last day of the month following the end of each calendar quarter. The quarterly reports would be required to include: (a) an identification of each project for which the Building Commission approved a budget increase during the quarter, including a description of the project and the amount of the increase; and (b) an identification of each project enumerated in the authorized state building program for which the Department of Administration (DOA) estimates a budget increase will be necessary for project completion, including a description of the project and the reasons for the project budget shortfall.

Single Prime Contracting Waiver. Under current law, any project with an estimated cost in excess of \$600,000 must be let using the single prime contractor process, under which only a general prime contractor has a contractual relationship with the state. Whenever the Building Commission determines that the use of innovative types of design and construction processes will make better use of the resources and technology available in the building industry, the Commission may waive certain requirements related to single prime contracting, if the action is in the best interest of the state and is approved by the Commission.

The bill would require the Building Commission to waive those same requirements relating to the single prime contractor process for projects costing \$200 million or more, if the state agency for which the project is constructed requests the waiver.

Bidding Procedures. The bill would specify that "bidding period" means the period beginning on the date of first publication of the advertisement for proposals and ending on the date of bid opening. Under the bills, a bidder or potential bidder could submit a question to DOA concerning the project being bid, up until two days prior to the end of the bidding period. In addition, DOA could issue addenda at any time during the bidding period to: (a) modify or clarify the drawings or specifications for the project being bid; or (b) extend the bidding period.

Selection of Project Architects and Engineers. Current law requires the DOA Secretary to establish a committee for construction projects for the purpose of selecting an architect or engineer

for the project. If the estimated cost of a construction project is \$7.4 million or more, the selection committee must use a request-for-proposal process to select an architect or engineer. The bill would increase this threshold from \$7.4 million to \$15.0 million, and would specify that the selection committee could not refuse to select an architect or engineer for a construction project that has an estimated cost of less than \$2.0 million because the architect or engineer operates an architect or engineering firm with only one responsible architect or engineer. The bill gives DOA the authority to increase this threshold above \$2.0 million, but limits this threshold to a maximum of \$15.0 million.

Claims Board Provisions. Under the bill, the Claims Board would be required to make a final determination on a claim within six months from the date that the claim was referred to the Claims Board, if the claim relates to a contract with: (a) the Department of Transportation for transportation infrastructure improvement; or (b) DOA or the Board of Regents of the University of Wisconsin System that is awarded for a construction project. If the Claims Board fails to make a final determination within six months, or concludes that the facts of the claim would be more properly adjudicated in a court of law, the claimant may commence an action against the state seeking judgment on the claim as provided under current law.

Energy Conservation Projects. Current law authorizes DOA to contract with qualified contractors for the performance of energy conservation audits at state buildings, structures, and facilities and for the performance of construction work at a state building, structure, or facility for the purpose of realizing potential savings of future energy costs identified in an energy conservation audit.

Under the bill, DOA and the Board of Regents of the University of Wisconsin System would be required to collaborate with energy service companies to identify and execute pilot projects using financing provided by the companies to upgrade facilities, reduce deferred maintenance, and increase sustainability.

Payment of Utility Service. The bill would require that each contract for construction work 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.

SUMMARY OF AMENDMENT

AA 1 and SA 1 would specify that when a project costing \$200,000,000 or more is constructed, the agency could not request that the Building Commission waive the requirements related to affiliation with labor organizations. Those current law requirements prohibit DOA from: (a) requiring that a bidder enter into or adhere to an agreement with a labor organization; (b) considering in awarding a contract whether any bidder has or has not entered into an agreement with a labor organization; and (c) requiring that a bidder or bidder's employees become or remain members of a labor organization or pay dues to such.

AA 1 and SA 1 would allow the Building Commission to increase the project budget of any project by more than 10% without providing notice to the Joint Committee on Finance, if the project budget increase is funded solely from program revenue, gifts, grants, and other receipts, or federal funds.

FISCAL EFFECT

As mentioned, the bill would transfer \$32 million from the general fund to the building trust fund in 2023-24.

DOA prepared a fiscal estimate on the bill, discussing the potential impacts of each of its provisions. For many of these, the effect on DOA operations was viewed as indeterminate. As part of its estimate, DOA presented a concern that the requirement for JFC 14-day passive review over certain project budget increases could delay timely approval of pending bids, which could delay completion of projects and have the potential of increasing project costs.

Prepared by: Sydney Emmerich