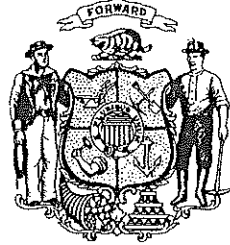


State of Wisconsin

SENATE CHAIR
Howard Marklein

316 East, State Capitol
P.O. Box 7882
Madison, WI 53707-7882
Phone: (608) 266-0703



ASSEMBLY CHAIR
Mark Born

308 East, State Capitol
P.O. Box 8592
Madison, WI 53708-8953
Phone: (608) 266-2540

Joint Committee on Finance

MEMORANDUM

To: Members
Joint Committee on Finance

From: Senator Howard Marklein
Representative Mark Born

Date: May 21, 2024

Re: 5-Day Passive Review Approval – DOA/DSPS

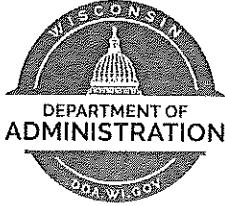
Pursuant to s. 16.515/16.505(2), Stats., attached is a 5-day passive review request from the Department of Administration on behalf of the Department of Safety and Professional Services, received on May 21, 2024.

Please review the material and notify **Senator Marklein** or **Representative Born** no later than, **Tuesday, May 28, 2024**, if you have any concerns about the request or if you would like the Committee to meet formally to consider it.

Also, please contact us if you need further information.

Attachments

HM:MB:jm



STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

Tony Evers, Governor
Kathy Blumenfeld, Secretary

Date: April 17, 2024
To: The Honorable Howard Marklein, Co-Chair
Joint Committee on Finance
The Honorable Mark Born, Co-Chair
Joint Committee on Finance
From: Kathy K. Blumenfeld, Secretary ^{DS}
Department of Administration *KB*
Subject: s. 16.515/16.505(2) Request(s)

APR 17 2024
J. Finance

Enclosed are request(s) that have been approved by this department under the authority granted in s. 16.515 and s. 16.505(2). The explanation for each request is included in the attached materials. Listed below is a summary of each item:

AGENCY	DESCRIPTION	2023-24		2024-25	
		AMOUNT	FTE	AMOUNT	FTE
DSPS 20.165(2)(j)	Safety and building operations	\$3,880,300		\$3,880,300*	

*Ongoing annual increase

As provided in s. 16.515, the request(s) will be approved on May 8, 2024, unless we are notified prior to that time that the Joint Committee on Finance wishes to meet in formal session about any of the requests.

Please contact Kirsten Grinde at (608) 266-1353, or the analyst who reviewed the request in the Division of Executive Budget and Finance, if you have any additional questions.

Attachments



STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

Tony Evers, Governor
Kathy Blumenfeld, Secretary

Date: April 15, 2024

To: Kathy Blumenfeld, Secretary
Department of Administration

From: Bryan W. Kirschbaum
Executive Policy and Budget Analyst

Subject: Request under s. 16.515 from the Department of Safety and Professional Services for increased PR expenditure authority.

Request

The Department of Safety and Professional Services requests an increase in expenditure authority of \$3,880,270 PR in each of fiscal years 2023-24 and 2024-25 in the department's safety and building operations appropriation under s. 20.165(2)(j).

Revenue Sources for Appropriations

The program revenue appropriation for the department's safety and building operations under s. 20.165(2)(j) is funded with program administration and inspection fees related to building operations and safety. The fee revenue collected originates from fees charged to building owners or construction contractors for building safety inspections, as required by law, for commercial buildings, fire suppression systems, elevators, boilers, and more.

Background

The Department of Safety and Professional Services is required to enforce all building codes and ensure proper operations of various building components, including heating and ventilation systems, boilers, plumbing, and other building features or components. To bolster existing departmental inspectors and increase efficiency of inspection activities, the department hires private contractual service providers to conduct various inspections. The contractors are allowed, under state law, to collect fees and retain the fee revenue as payment for services rendered, referred to as an indirect payment method. These contractors are required to sign contracts with the department and are required to follow specific rates as outlined by the department. No actual revenues or payments are made by the department.

State agencies are required, under section 6.02 of the Wisconsin Accounting Manual, to have statutory authority to allow vendors to assess programmatic fees to customers, also referred to as indirect payment of vendor fees. Section 6.02 of the Wisconsin Accounting Manual also clarifies that under s. 20.903(1), Wis. Stats., state agencies are required to record such indirect fees paid to vendors within a state appropriation. In a review of fiscal year 2019-20 transactions, the Legislative Audit Bureau determined that the department has the authority to allow indirect

Members, Joint Committee on Finance
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April 15, 2024

payment of vendor fees but was incorrectly recording such transactions as a note within the Annual Fiscal Report. The Legislative Audit Bureau indicated that the department must comply with the accounting manual policy and s. 20.903(1) beginning with fiscal year 2020-21, and record such expenditures and revenues from third-party contractor activity within the department's state appropriations. The department has complied and records the revenues and expenditures in the safety and building operations appropriation under s. 20.165(2)(j).

In June 2021, the Joint Committee on Finance approved a request from the department to increase the expenditure authority for the safety and buildings operations appropriation by \$565,000 PR annually in each of fiscal years 2021-22 and 2022-23 in order to correctly record the expenditures within the department's appropriation structure. Because this supplement did not address the recording of expenditures needed for fiscal year 2020-21, the committee approved another request from the department in July 2021 to increase expenditure authority by an additional \$1,353,000 PR for fiscal year 2020-21. Although these actions addressed the recording of expenditures in prior fiscal years, it did not address the ongoing expenditure authority issue that persists.

The Governor has proposed several solutions to this ongoing issue. In his 2021-23 Executive Budget, the Governor proposed a permanent base increase of \$1.4 million PR expenditure authority for the safety and buildings operations appropriation. In his 2023-25 Executive Budget, he proposed the creation of a new sum sufficient appropriation for contract fee collection in order to separate the fee revenue and expenditures from operating dollars. Both items were removed for further consideration by the committee, and no alternative plan was proposed or approved by the Legislature.

Analysis

Since fiscal year 2020-21, the department has begun contracting with additional vendors to support additional inspection activities, including uniform dwelling code inspections, elevator inspections, boiler inspections, and electrical inspections. In 2022, the department signed several new vendor contracts to expand uniform dwelling code and electrical inspections by third-party contractors to be conducted statewide (previous contracts for inspectors only operated in more rural or less populated areas). Due to the determination that both revenues and expenditures must be recorded within the department's appropriation, this has caused a significant increase in the amount of expenditure activity. As identified by the department, the projected amount of inspection activity will reach \$4.4 million PR in the current biennium, or 23.9 percent of the total expenditure authority budgeted for the department's safety and building operations appropriation. This situation presents two critical issues for departmental operations.

The first issue is related to the structure of the current appropriation. Although the recording of vendor fees and revenues within state appropriations should have an overall net zero effect. The department does not expend or receive any revenue pertaining to these third-party inspector contracts, so the way in which these fees are recorded is not proportional to how normal expenditures or revenues are recorded. Although the department has the ability to transfer expenditure authority within the existing appropriation, it cannot increase the overall expenditure authority in real time even as the recording of expenditures for vendor fees fluctuates. Since the department is required by law to record expenditures related to contractor vendor activity within the current fiscal year, the amount of expenditures for vendor fees is

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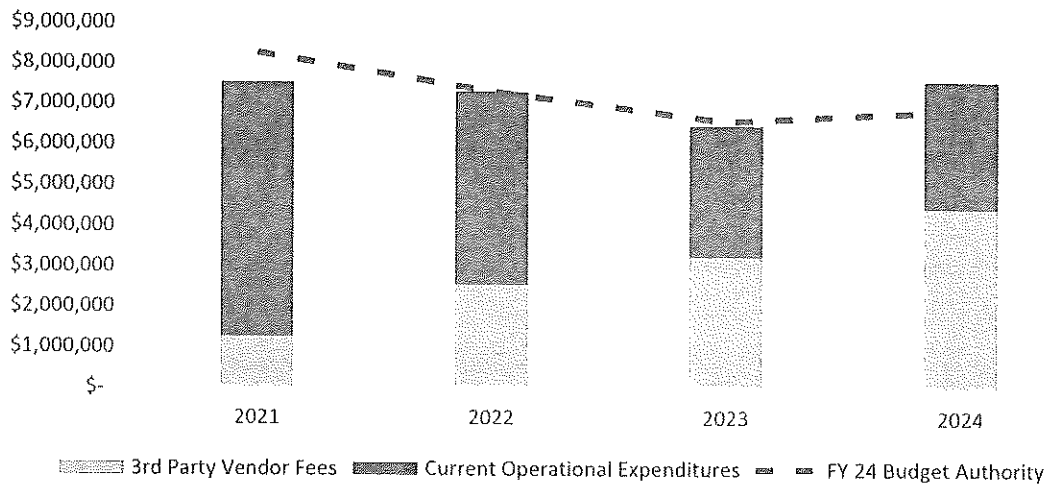
absorbed within the annual, sum certain appropriation, causing the overall spending authority for normal operations to be reduced. As contractor vendor expenditures increase, the amount remaining to spend for normal operations decreases. Figures 1 and 2 illustrate the comparison between the department's expenditure authority versus overall third-party inspection contractor activity since fiscal year 2020-21.

Figure 1: Contractor Vendor Activity Compared to Building and Inspection Expenditure Authority Under s. 20.165(2)(j)

Fiscal Year	Appropriation Expenditure Authority	Third-Party Inspection Contractor Activity	Percentage of Total Expenditure Authority
FY21	\$16,693,500	\$1,257,848	7.53%
FY22	\$17,821,800	\$2,557,523	14.35%
FY23	\$17,230,000	\$3,254,366	18.89%
FY24	\$18,598,600	\$4,445,870*	23.90%
FY25	\$18,827,000	\$4,445,870*	23.61%

*Estimated third-party contractor expenditures.

Figure 2: Operational Expenditures vs. Third-Party Vendor Expenditures (Supplies and Services)



The second issue relates to the overall volume of third-party contractor inspector expenditures. The dramatic increase of these expenditure recordings over the past several fiscal years was largely due to private contractual services expanding statewide and into additional inspection sectors, as stated above. The overall volume of recorded expenditures is entirely reliant on the economy and the success of the building seasons, making accurate projections difficult. Recent economic trends show that although several pressures on building projects exist (interest rates, inflation, and workforce/labor issues), the state's building market continues to be robust, especially for residential, single-family homes.

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The department has made several budgetary and operational decisions to accommodate the increase in third-party vendor expenditure recordings within existing expenditure authority. In previous fiscal years, the department has been forced to reallocate resources elsewhere to address the shortfall and has indefinitely put on hold several information technology projects, including additional phases of the most recent Electronic Safety Licensing Application (eSLA) project approved in the 2023-25 biennial budget. In the current fiscal year, the department is projecting that as of May 2024, the department will have insufficient expenditure authority within the appropriation to reflect both vendor fee expenditure recording and support overall departmental operations, causing future payments from the appropriation to be in forbearance. This means that several operational functions will need to cease, which includes, but are not limited to: (a) travel for inspection staff and (b) support for Department of Administration Division of Enterprise Technology spending for several information technology systems, including eSLA. This leaves the department in a very precarious situation, especially if any unforeseen expenditure arises, and the overall effectiveness of departmental operations may be compromised.

The department is requesting a base-building, permanent increase of \$3,880,300 PR expenditure authority for each of fiscal years 2023-24 and 2024-25 to address the continued expenditure authority shortfall in the appropriation due to the lack of statutory authority to account for the recording of contractual services. No new or additional resources from the department or state are needed for this request. The department's request is a technical adjustment to expenditure authority that is necessary to comply with the state accounting manual while maintaining a high level of service for building inspection customers.

Recommendation

Approve the request for ongoing expenditure authority.

Prepared by: Bryan W. Kirschbaum
266-8219

CORRESPONDENCE/Memorandum

State of Wisconsin
Department of Administration

Date: April 15, 2024
To: Brian Pahnke
From: Bryan W. Kirschbaum
Subject: Section 16.515 Request

Attached is a s. 16.515 request analysis for your approval and processing. Listed below is a summary of each item:

DOA RECOMMENDATION:

<u>AGENCY</u>	<u>DESCRIPTION</u>	<u>2023-24</u>		<u>2024-25</u>	
		<u>AMOUNT</u>	<u>FTE</u>	<u>AMOUNT</u>	<u>FTE</u>
DSPS 20.165(2)(j)	Safety and building operations	\$3,880,300		\$3,880,300	

AGENCY REQUEST:

<u>AGENCY</u>	<u>DESCRIPTION</u>	<u>2023-24</u>		<u>2024-25</u>	
		<u>AMOUNT</u>	<u>FTE</u>	<u>AMOUNT</u>	<u>FTE</u>
DSPS 20.165(2)(j)	Safety and building operations	\$3,880,270		\$3,880,270	

BP APPROVAL 

Wisconsin Department of Safety and Professional Services
Office of the Secretary
4822 Madison Yards Way
PO Box 8363
Madison WI 53708-8363



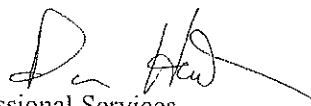
Phone: 608-266-1352
Web: <http://dsps.wi.gov>
Email: dsps@wisconsin.gov

Tony Evers, Governor
Dan Hereth, Secretary

MEMORANDUM

DATE: March 14, 2024

TO: Brian D. Pahnke, Administrator
Division of Executive Budget and Finance
Department of Administration

FROM: Dan Hereth, Secretary-designee 
Department of Safety and Professional Services

RE: Request under Wisconsin Statute §16.515 from the Department of Safety and Professional Services for Appropriation Authority to Comply with Statute and Rules for Indirect Payments

The Department of Safety and Professional Services (DPS) is charged with providing inspections for electrical installations, boilers, elevators, and dwellings. One strategy the department has used to meet the demand for these inspections is to award contracts to qualified individuals to supplement staff inspections, particularly in remote and sparsely populated regions of the state. These contractors collect fees to cover their expenses as allowed under contract in what is called an "indirect payment" arrangement. DPS does not receive any portion of the collected fees or make payments to the contractors, which adds to the efficiency of this arrangement.

Although the state neither receives the revenue nor pays for expenses DPS must, under § 20.903 (1) of statute and Wisconsin Accounting Manual (WAM) Section 6-02, have sufficient funds appropriated as if the contracted expenses were incurred by the department. Although DPS has requested and received funds to cover these third-party expenses in the past the amount appropriated is now insufficient to cover the increased third-party providers' inspection activity.

DPS requests an increase in appropriation authority of \$3,880,270 in PR to cover this inspection activity increasing the allocation for this activity from \$565,600 to \$4,445,870 under 20.165(2)(j) in the current biennium for FY 2023-24 and FY 2024-25. Although this is a large amount the request is fiscally neutral, as the accounting entry to recognize contracted vendor activity is a simple accrual where revenue equals expense. The table below shows the increase in inspection activity that supports the request.

Inspection Type	FY2020-21	FY2021-22	FY2022-23	FY2023-24*	FY2024-25*
Boiler	\$317,723	\$545,408	\$457,223	\$ 598,400	\$598,400
Electrical	\$397,665	\$1,339,546	\$1,873,491	\$ 2,674,650	\$2,674,650
Elevator	\$418,443	\$497,030	\$744,479	\$ 921,360	\$921,360
Uniform Dwelling Code (UDC)	\$124,016	\$175,539	\$179,173	\$ 251,460	\$251,460
Total	\$1,257,848	\$2,557,523	\$3,254,366	\$ 4,445,870	\$4,445,870

*Projected amounts

*Brian D. Pahnke, Administrator
Division of Executive Budget and Finance
Memorandum – Request Under Wisconsin Statute §16.515
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Page 2*

DSPS began recognizing inspection vendors in FY2020-2021 with five vendors providing Uniform Dwelling Code (UDC) inspections and two providing elevator inspections. In January of that year, a boiler inspector was added. In March 2023, five electrical inspectors came on contract, and in April, DSPS added three more UDC inspectors. In FY 2022-23, uniform dwelling code and electrical inspection contracts were up for rebid and expansion to statewide coverage. In FY 2022-23, with the new contracts and statewide coverage, fees collected jumped to \$3,254,000 but this increase does not reflect an entire year of inspection with the increased scope. DSPS's FY 2023-24 projection reflects an entire year at the expected increased with statewide scope and recovery from any suppressed demand associated with COVID-19 shortages.

Requirements

The Wisconsin Accounting Manual Section 6-02 outlines the requirement for what is categorized as indirect vendor fee payment (payment made to the vendor not the state) stating that "the state agency must have the statutory authority in place that allows the vendor to assess fees to the program customers. In addition, Section 20.903(1), Wisconsin Statute requires that the state agency records the indirect fees paid to the vendor within a state appropriation."

DSPS complies with the WAM requirement that at least monthly, the contracting state agency must:

- Record any vendor fees collected by the vendor as revenues within a state appropriation.
- Record any vendor fees retained by the vendor as expenditures within a state appropriation.

This compliance consumes § 20.165(2)(j) appropriation authority intended for other purposes including recently authorized funding for important IT projects, system operating licenses and services, as well as funding to maintain operations such as the Division of Industry Services' share of agency costs for DOA services such as maintaining secure systems, supporting human resources, procurement, and finance functions.

Monthly reported fees collected, which reflect many factors including economic conditions, weather, and builder scheduling, have remained highly variable. An annualized projection for FY 2023-24 based on the lowest or the highest cost months since May provides a range of between \$2.8 million and \$6.1 million per year. Currently, this contracted inspection activity is recognized within 20.165(2)(j) as supplies and services which is appropriated \$6.9 million in FY 2023-24. To appropriately record this activity will consume between 41% and 88% of available funding for agency operations in 20.165(2)(j).

History

DSPS has contracted with third party inspection vendors since before the agency was created in 2011. Prior to 2021, although not recorded on GL, third party revenue and expenses were reported annually to the State Controller's Office (SCO). From 1999 through 2020 the State Controller's Office included a Note to Fund Statement in their Annual Fiscal Report for unappropriated funds that included DSPS's third party inspectors.

In 2012 the Wisconsin Accounting Manual was revised to include a new condition that the revenue and expenses related to entities acting on behalf of an agency, such as inspections, had to be reported in an appropriated fund. The need to apply this change to the reporting was discovered during the Legislative Audit Bureau's audit of the 2020 Annual Fiscal Report in FY 2020-2021.

*Brian D. Pahnke, Administrator
Division of Executive Budget and Finance
Memorandum – Request Under Wisconsin Statute §16.515
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Page 3*

DSPS worked closely with the SCO to determine a plan. By February 2021 the course of action was determined and would take immediate effect in FY 2020-2021 and continue thereafter. This posed two problems, one in the current fiscal year because the budget authority was insufficient and another for subsequent fiscal years. DSPS had not sought appropriation authority for this in their 2021-23 biennial budget submitted in September of 2020. A budget errata request for \$1.4 million was submitted on April 23, 2021, while a § 16.515 request was submitted June 11, 2021, for \$1,353,000.

Late in FY 2021 the Joint Committee on Finance took two actions related to this issue. On June 2, 2021, the Committee approved an increase in expenditure authority for FY 2021-22 and FY 2022-23 in the amount of \$565,000 ongoing annually, less than the amount requested. A month later July 2, 2021, the Committee approved one-time funding of \$1,353,000, the full amount requested, to enable DSPS to meet the WAM reporting requirement in FY 2020-2021.

In 2022 for the 2023-25 budget request, anticipating significant budget impact with the statewide expansion of electrical and UDC inspection, DSPS requested a solution that was responsive to the WAM requirements but would segregate the funding needed for this from regular operating funding. DSPS requested a sum sufficient appropriation so that the appropriation authority would match to the need each year and be fully separate from the amounts appropriated for operations. This request, included in the Governor's budget, was denied.

Justification

Since these previous requests, DSPS's use of professional contract inspectors has increased, and this has resulted in the need for increased budget authority. DSPS has no control over the number or mix of inspections since this is driven by the projects being built throughout Wisconsin.

The implications of not having relief are serious for DSPS. A successful economy and extended building season will require DSPS to use more of its appropriation authority. Currently the shortfall is on allotment Line 4 operating under "full control" in the STAR ERP system, which means that when there is insufficient appropriation authority then no additional payments may be made. DSPS anticipates this full control stop will occur in May without the needed appropriation authority. Consider what would happen if a major issue with the eSLA system that provides for building plan review occurred and there was no funding for system repair. This would have a major negative impact on the 2024 building season.

In addition, technology projects, including \$479,700 authorized in the 2023-25 budget, are now on indefinite hold to ensure DSPS does not run out of funding. To remain in compliance, DSPS will have to use much of the appropriation authority authorized for other purposes to cover the indirect expenses that DSPS does not incur but must maintain on the ledger. To remain in operation DSPS requires the requested appropriation authority.

Contact Information:

If you have questions regarding this request or need more information, please contact Lilian Kelly, Budget and Policy Director, Division of Performance and Management Services at lilian.kelly@wisconsin.gov or (608) 266-0958.