



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

June 2, 2011

Joint Committee on Finance

Paper #182

Indexing of Building Project Thresholds (Building Program)

[LFB 2011-13 Budget Summary: Page 546, #5]

CURRENT LAW

The Building Commission shall authorize the design and construction of a state facility, building or structure, the repair, remodeling, or improvement of an existing facility, or the acquisition of land exceeding \$500,000 only if the project or acquisition is enumerated in the biennial state building program.

The Building Commission may authorize a project costing \$500,000 or less for any state agency in accordance with priorities to be established by the Commission and may adjust the priorities by deleting, substituting or adding new projects as needed to reflect changing program needs and unforeseen circumstances.

The Building Commission must approve the final plan for any project for which the contract construction, reconstruction, or remodeling of state facilities that exceeds \$150,000.

The Department of Administration (DOA) is required to seek bids from the lowest responsible qualified bidder and meet the requirements for soliciting those bids for any construction project that exceeds \$40,000.

BUILDING COMMISSION

Require that, no later than March 1 of each odd-numbered year, DOA would determine the percentage increase or decrease in the construction cost index, as published by the Engineering News-Record, or its successor index as determined by DOA. Require DOA to determine the percentage increase or decrease in the index during the 24-month period ending on the preceding December 31, as compared to the index for the last day of the second preceding 24-month period. Specify that DOA would multiply the number one plus or minus the construction cost index percentage increase or decrease, as determined by the Department, by the following:

a. the enumeration threshold (currently \$500,000) at which projects involving the design and construction of a state facility, building or structure, the repair, remodeling, or improvement of an existing facility, or the acquisition of land are required to be enumerated in the biennial state building program;

b. the threshold (currently \$500,000) at which the Building Commission may authorize a project for any state agency in accordance with priorities to be established by the Commission and may adjust the priorities by deleting, substituting or adding new projects as needed to reflect changing program needs and unforeseen circumstances;

c. the threshold (currently \$150,000) on the size of contract for construction, reconstruction, or remodeling of state facilities that requires Building Commission approval of final plans for the project; and

d. the threshold (currently \$40,000) on the size of contract for which DOA is required to seek bids from the lowest responsible qualified bidder and meet the requirements for soliciting those bids.

Specify that the resulting product would be in effect in lieu of the current law, or indexed, threshold amounts upon publication in the Wisconsin administrative register for the period beginning on July 1 of the same year. Specify that the indexed amount would remain in effect until a subsequent determination under this indexing provision by the Department becomes effective. Specify that if a threshold amount has been previously indexed by DOA, DOA would be required to multiply the number one plus or minus the change in the construction cost index by the existing, indexed threshold amount.

These provisions would first apply with respect to approvals and authorizations granted and solicitations made on July 1, 2013.

DISCUSSION POINTS

1. As drafted, the indexing provisions recommended by the Building Commission would index the various project thresholds every two years by change in the construction cost index, as published by the Engineering News-Record (ENR), or its successor index, as determined by DOA. According to ENR, the construction cost index is based on a labor factor of 200 hours of common labor at the 20-city average of common labor rates, and material factors of 25 hundredweight standard structural steel shapes at the mill price prior to 1996 and the fabricated 20-city price from 1996, plus 1.128 tons of portland cement at the 20-city price, plus 1,088 boardfeet of 2 x 4 lumber at the 20-city price.

2. However, after discussions with DOA Division of State Facilities staff, it appears that the intent of the Commission was for the biennial indexing to be based on the ENR's building cost index, a separate index published by ENR that is specific to building construction. According to ENR, the building cost index uses the same non-labor factors used in the construction cost index. However, the labor factors used in the building cost index are based on 68.38 hours of skilled labor at the 20-city average of bricklayers, carpenters, and structural ironworkers' rates. This building cost index is based on the types of labor that would likely be needed in the construction of facilities like those typically carried out by the state.

3. Under the Commission's recommendations, the various thresholds would be increased by percentage increase or decrease in the ENR index during the 24-month period ending on the preceding December 31, as compared to the index for the last day of the second preceding 24-month period. The recommended indexing provisions would appear to adjust the threshold amounts by the percentage change between the ENR index for the final month of a 24-month period (December), over that same month ending the prior 24-month period. Basing an indexing adjustment on one month of an index could lead to larger swings in the percentage change used to index these project thresholds than if a 24-month average for that period were used. For example, under the Commission's proposed indexing provisions, a short term spike in fuel prices or some other event in the December that ends the 24-month indexing period could cause a spike in the index for that month, which would have a significant impact on the indexing of the threshold levels over the next one or two 24-month indexing periods. However, such short term spikes in the index would have less of an affect on the indexing adjustment if that short-term rise was smoothed out using a 24-month average. Consequently, in order to help moderate some of the potential short-term volatility that can result from using a single month as the basis for indexing, other federal and state automatic indexing provisions often use an average over a specified period when indexing rather than a month over month methodology.

4. Typically, for other indexed provisions in the statutes, the product resulting from multiplying the indexing coefficient by the factor or threshold to be indexed is usually rounded to a whole dollar amount, as specified in statute. The specific whole dollar amount could be the nearest \$100, \$1,000, or other amount depending on the factor or threshold being indexed. However, under the Commission's recommendation, the new threshold amounts would be adjusted to the nearest penny. To address this, the Committee could require that DOA round the annual indexed amounts to the nearest five thousand dollar increment.

5. Indexing certain provisions in statute is generally intended to allow those provisions to keep pace with inflation. Over time, inflation can result in the exact same project taking significantly more funding to complete, as the cost of labor inputs and materials increase. The Building Commission's recommendations attempt to recognize the impact that inflation has had on the building project thresholds set in statute. In addition, under its proposal, the Commission is attempting to put in place a statutory mechanism that will automatically index these building program and bidding thresholds each biennium in order to keep up with inflation. As a result, under these recommendations, future adjustments to these thresholds would not require an action of the Legislature.

Indexing of Project Enumeration and Building Commission Project Authority

6. The requirement that certain sized construction projects must be enumerated by the Legislature in the authorized state building program was established in Chapter 154, Laws of 1969. At that time, the threshold was established at \$250,000. The corresponding threshold at which the Building Commission may authorize a project for any state agency in accordance with priorities to be established by the Commission and may adjust the priorities by deleting, substituting or adding new projects as needed to reflect changing program needs and unforeseen circumstances was established under Chapter 90, Laws of 1973. The two thresholds were increased from \$250,000 to \$500,000 under 1997 Act 27.

7. The project enumeration requirement is intended to ensure some level of legislative

review of the need for each major state building project and its potential impact on agency operations. A project enumeration simply lists the project and budget amount as part of the biennial state building program. The building program is typically included as part of the state's biennial budget, but can be modified by separate legislation. Under this process, the Legislature has oversight relating to the total capital budget, as well as approval authority over the enumerated projects. In this way, project enumerations serve as a budgetary control similar to the appropriations process for operating budgets, and establish the amount and purpose of funds that are provided for a project.

8. Any decision whether or not to index these project thresholds must weigh the Legislature's oversight authority regarding the use of state funds for these size of projects against the possible benefits of increasing the Commission's discretion for somewhat larger state building projects. Under the Commission's recommendations, if these thresholds are increased, the Building Commission could approve projects and move funds among projects valued between \$500,000 and the new, indexed threshold. The Legislature would still have to appropriate the funding necessary to complete such projects, but projects under the new threshold, and their specific funding sources, would no longer have to be specifically identified in a state building program.

9. If the Committee would like to maintain legislative control over the size of projects that would be subject to these thresholds, the Committee could simply increase the allowable project size in statute. This would be consistent with how these thresholds have been increased in the past. Indexing these thresholds by the ENR building cost index each year since the thresholds were last indexed in 1997 would result in a project size of approximately \$760,000. Also, this alternative would immediately recognize the impact of past inflation on the existing \$500,000 threshold. Comparatively, under the Building Commission's recommendations, the threshold would only recognize future inflation and would take several years of indexing in order to reach this \$760,000 level.

Building Commission Approval of Final Project Plans

10. The size of project that requires Building Commission final plan approval on any contract for construction, reconstruction, or remodeling of state facilities has been increased several times since it was first established at \$15,000. The following provides a legislative history of changes to this provision.

<u>Act or Law</u>	<u>Threshold</u>
Initial Amount	\$15,000
Chapter 34, Laws of 1979	30,000
1991 Act 31	100,000
2005 Act 391	150,000

11. Projects for the construction, reconstruction, or remodeling of state facilities that have a total project budget exceeding \$150,000 must be approved by the Building Commission prior to final design. According to the Building Commission procedures manual, projects funded from agency funds, program revenues, gift funds or other than state building program funds, and costing less than \$40,000, do not require DOA approval and submittal of a small project request, unless DOA is involved in the consulting services or construction contracting services. Projects

funded from state building program "All Agency" funds, agency funds, program revenue, gift funds, or other non-Capital Budget funds, with costs between \$5,000 and \$150,000, do not require Building Commission approval. However, all projects over \$40,000 are to be submitted to DOA for: (a) approval of delegated authority or assignment of architectural and engineering consulting services; (b) review of technical specifications and contract documents; and (c) compliance with applicable rules and regulations.

12. Increasing the \$150,000 threshold would increase the cost size for projects that would require DOA approval only. Consequently, it would also reduce the future number of smaller projects that would require Building Commission approval. This threshold has been increased in the past because due to the impact of inflation has on the size of project requiring Building Commission review. For example, it can happen that the exact same project, which today would require Building Commission approval, if completed five years earlier would not have been subject that approval. Due only to construction inflation, rather than any change in the size or scope of the project, the Commission would now have to be involved. Past adjustments to this threshold have been made to recognize these inflationary pressures, and limit the Commission from having to approve larger numbers of small projects each year.

13. If the Committee would like to maintain legislative control over the size of projects that would be subject to this threshold, the Committee could simply increase the allowable project size in statute. This would be consistent with how this threshold has been increased in the past. Indexing this threshold by the ENR building cost index each year since the it was last indexed in 2005 would result in a project size threshold of approximately \$185,000. Also, this alternative would immediately recognize the impact of past inflation on the existing \$150,000 threshold. Comparatively, under the Building Commission's recommendations, the threshold would only recognize future inflation and would take several years of indexing in order to reach this \$185,000 level.

Indexing of Competitive Bidding Requirement Threshold

14. The size of project that is required to be competitively bid has also been increased several times since it was first established. For a long period on time, all state contracts exceeding \$3,000 in cost had to be competitively bid. Under the Chapter 497, Laws of 1969, the competitive bid contracting requirement specific to construction contracts was established for all such contracts exceeding \$15,000. That amount was increased to \$30,000 under 1975 Act 39, and then to \$40,000 under 2005 Act 391. These past revisions to the competitive bidding threshold have recognized the impact that inflation has had on the project threshold.

15. In determining whether or not to allow the automatic indexing of the competitive bidding requirement threshold, the Committee must weigh the policy strengths associated with public bidding process, such as competitive pricing and openness, against the increased flexibility being provided the Building Commission and DOA regarding these bidding processes. Under the proposed indexing, DOA would not be required to competitively bid projects between \$40,000 and the indexed threshold, which would allow DOA to directly negotiate such contracts with construction firms, which could speed up delivery of these projects. Conversely, each time the threshold would be indexed, any policy benefits associated with the open and public nature of the process or getting the lowest public price possible for the state, could be jeopardized for larger sized projects and for an additional number of projects.

16. For reasons similar to those identified with the other thresholds, the Committee could simply increase the allowable project size that would have to be completely bid in statute. This would be consistent with how this threshold has been increased in the past. Indexing the competitive bidding threshold by the ENR building cost index each year since the threshold was last indexed in 2005 would result in a project size of approximately \$50,000. This alternative would immediately recognize the impact of inflation relative to the existing \$40,000 threshold. Comparatively, under the Building Commission's recommendations, the threshold would only recognize future inflation and would take several years of indexing in order to reach this \$50,000 level.

ALTERNATIVES

1. Approve the Building Commission's recommendations that no later than March 1 of each odd-numbered year, the Department of Administration (DOA) would determine the percentage increase or decrease in the construction cost index, as published by the Engineering News-Record, or its successor index as determined by DOA. Require DOA to determine the percentage increase or decrease in the index during the 24-month period ending on the preceding December 31, as compared to the index for the last day of the second preceding 24-month period. Specify that DOA would required multiply the number one plus or minus the construction cost index percentage increase or decrease, as determined by the Department, by the following:

a. the threshold (currently \$500,000) at which a project is required to be enumerated in the state building program;

b. the threshold (currently \$500,000) at which the Building Commission may authorize a project for any state agency in accordance with priorities to be established by the Commission and may adjust the priorities by deleting, substituting or adding new projects as needed to reflect changing program needs and unforeseen circumstances

c. the threshold (currently \$150,000) on the size of contract for construction, reconstruction, or remodeling of state facilities that requires Building Commission approval of final plans for the project; and

d. the threshold (currently \$40,000) on the size of contract for which DOA is required to seek bids from the lowest responsible qualified bidder and meet the requirements for soliciting those bids.

Include the remaining Commission recommendations related to these provisions.

2. Modify Alternative 1, by doing one or more of the following:

a. specify that the thresholds would be indexed by ENR's building cost index rather than ENR's construction cost index.

b. specifying that thresholds would be indexed by the percentage increase or decrease in the average of the ENR index during the 24-month period ending on the preceding December 31, as compared to the 24-month average of the index for the second preceding 24-month period.

c. specify that the product resulting from DOA multiplying the number one plus or minus the construction cost index percentage increase or decrease, as determined by the Department, be rounded to the nearest \$5,000 increment.

3. Delete the Building Commission's recommendations. Instead, specify the following adjustments to the following thresholds:

a. increase the threshold at which a project would be required to be enumerated in the state building program from \$500,000 to \$760,000;

b. increase the threshold at which the Building Commission may authorize a project for any state agency in accordance with priorities to be established by the Commission and may adjust the priorities by deleting, substituting or adding new projects as needed to reflect changing program needs and unforeseen circumstances from \$500,000 to \$760,000.

c. increase the threshold on the size of contract for construction, reconstruction, or remodeling of state facilities that would require Building Commission approval of final plans for the project from \$150,000 to \$185,000; or

d. increase the threshold on the size of contract for which DOA would be required to seek bids from the lowest responsible qualified bidder and meet the requirements for soliciting those bids from \$40,000 to \$50,000.

4. Take no action (the current threshold amounts would remain).

Prepared by: Al Runde