



Legislative Fiscal Bureau

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

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Joint Committee on Finance

Paper #748

Building Projects (UW-Madison Authority and UW System)

[LFB 2011-13 Budget Summary: Page 467, #3 and 4]

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. State building projects with costs of less than \$500,000 do not require enumeration by the Legislature.

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 for construction, reconstruction, or remodeling of state facilities that exceeds \$150,000 regardless of fund source. Current law exceptions to this include: (a) Department of Transportation projects other than buildings, structures and facilities to be used for administrative or operating functions; (b) Department of Transportation build-operate-lease or transfer agreements; (c) Department of Natural Resources construction work related to hazardous substance spill response or environmental repair; (d) UW Hospitals and Clinics Authority construction or improvement projects; (e) Fox River Navigational System Authority rehabilitation projects; (f) State Fair Park Board construction projects with costs of not more than \$250,000; (g) Wisconsin Economic Development Corporation projects; and (h) projects approved by the Governor in response to emergency situations.

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. The Building Commission may prescribe simplified policies and procedures to be used in lieu of statutory procedures governing construction project contracts for any project that does not require prior approval of the Building Commission.

GOVERNOR

Exempt UW-Madison building projects that are funded entirely from sources other than general purpose revenue (GPR) and general fund supported borrowing (GFSB) from the following current law provisions: (a) DOA direction and supervision of all engineering and architectural services and construction work related to state building projects; (b) DOA review and approval of plans and specifications for UW System building projects; (c) periodic review by DOA of the progress of UW System building projects; (d) provisions governing construction project contracts, including bidding procedures, the use of recovered and recycled materials, energy efficiency standards, subcontractors, and partial payments to contractors; (e) approval by the DOA Secretary or the Governor of contracts of more than \$10,000 for engineering services, architectural services, or construction work or of more than \$30,000 for limited trades work; and (f) statutory procedures related to the employment of engineering, architectural, or allied services or expenditures for construction purposes. Specify that the UW-Madison could employ engineering, architectural, or allied services and expand moneys for construction if the project is funded entirely from sources other than GPR and general fund supported borrowing. Provide that Building Commission could not enter into contracts for such projects.

UW-Madison building projects funded entirely from sources other than general purpose revenue and general fund supported borrowing with total costs in excess of \$500,000 would require enumeration by the Legislature and approval by the Building Commission as under current law. In addition, such projects would be subject to statutory provisions related to bids by and contracts with disabled veteran- and minority-owned businesses.

Provide that UW-Madison building projects that are funded at least in part with general purpose revenue or general fund supported borrowing would be subject to the current law provisions listed above.

Provide that UW-Madison would not require the prior approval of the Building Commission to contract in connection with any building project with a cost of not more than \$500,000 if that project is funded entirely with sources other than general purpose revenue or general fund supported borrowing. Specify that the Building Commission may not prescribe simplified policies and procedures for such projects.

DISCUSSION POINTS

1. Through the last six biennial budgets, the Legislature has enumerated a total of 171 capital projects for UW institutions and the UW System. A total of 58 projects have been enumerated for UW-Madison including 40 projects that were funded entirely with sources other than GPR and GFSB. By comparison, a total of 113 projects have been enumerated for all other UW institutions and the UW System of which 58 have been funded entirely with sources other than GPR and GFSB. In general, academic buildings and research facilities are funded in whole or in part with GFSB, while residence halls, student unions, athletics facilities and parking projects are funded through student fees and other revenues.

2. There are three major fund sources for UW capital projects: GFSB, program revenue supported borrowing, and gifts and grants. Program revenue supported borrowing (PRSB) is state

general obligation bonds that are repaid with a specified revenue stream. At UW System institutions, these bonds are generally repaid with student dormitory fees, student segregated fees, parking fees, and other user fees. Over the past six biennia, GFSB has funded 37% of UW enumerated projects, PRSB has funded 41%, gifts and grants have funded 21%, and the remaining 1% has been funded with other sources. This mix of fund sources varies by institution; those institutions who have had large academic building projects over that period of time have been enumerated relatively more GFSB while those institutions that have had residence halls or student union projects have been enumerated relatively more PRSB.

3. UW-Madison in particular has had several projects enumerated that have been funded in whole or in part with gift and grant funds. While these funds made up 21% of all UW enumerated projects, at UW-Madison, these funds 31% of total enumerations. In addition, when UW-Madison is excluded, gifts and grants made up only 7% of total enumerations for all other UW institutions and UW-Extension.

4. UW-Madison and UW System have identified several areas of concern related to DOA oversight of building projects. First, UW-Madison and UW System have argued that current law provisions and DOA procedures lead to delays that in and of themselves can increase the cost for projects. In cases where the project is funded in whole or in part by gifts, this can lead to frustration on the part of the institution and of the donor. While delays are a concern for all projects, a high level of oversight by the state may be less warranted in cases where projects are funded with private dollars.

5. State bidding rules may also add costs to projects. Under current law, DOA takes both bids that would cover the entire scope of the project and separate bids on any division of the work that it designates. DOA is required to award the project contract or contracts to the lowest qualified responsible bidder or the combination of bidders that result in the lowest total construction cost for the project. This allows both small contractors and large construction firms to bid on state projects. However, when contracts related to one project are awarded to multiple bidders, there can be varying levels of coordination amongst those bidders. If one contractor experiences work delays or makes an error, it may interrupt or delay the work of other contractors leading to costly delays. In addition, no one contractor is responsible for the project as a whole. If an error or omission is discovered after the project is completed it can be difficult to determine which of the contractors is responsible and should be charged for any corrective action. Although contracting with multiple bidders on a single project may appear to be the least expensive option at the bidding phase, often delays and corrective actions increase the overall cost of the project to above the amounts bid by single construction firms.

6. Under current law, agencies can request waivers to bid projects with a single contract instead of to individual contractors. UW-Madison and UW System have argued repeatedly that certain projects would inherently be better suited to bidding through a single-prime, construction manager, or construction manager at-risk arrangement. These are projects that are complex in nature, such as research facilities or academic laboratories, or that require construction to occur in a limited period of time, such as the renovation of a residence hall or classroom building over the summer. Under the bill, UW-Madison authority projects that are funded entirely from sources other than GFSB and GPR would be exempt from current law bidding provisions.

7. Under the bill, the UW-Madison non-GFSB, non-GPR projects would be exempt from current law provisions requiring that contracts be publicly and competitively bid. If the Committee wishes to ensure that these contracts continue to be publicly and competitively bid, the Committee could exempt such projects from DOA oversight provisions but not from the statutory requirements related to bidding. Alternatively, the Committee could require the UW-Madison authority Board of Trustees or the Board of Regents to adopt bidding policies to ensure public, competitive bidding.

8. As DOA bids the contracts and is the ultimately the payer of those contracts, the individual contractors or the construction firm have little incentive to listen to the concerns of the UW institution for which the project is being built. While this is a concern for all projects, it is a particular issue in cases where projects are funded entirely through student fees, as is the case with student unions, or with gift funds. In addition, while the UW System and the UW institution where the project will be located are part of the architect selection team, DOA representatives make up the majority of such teams reducing the institution's ability to select its preferred architect. Not knowing to what extent their input will be considered may deter potential donors and may serve as a disincentive for chancellors and deans who may be charged with raising funds to support project. By allowing UW System or UW-Madison to manage their own projects, which would include architect selection and bidding the contract, individual institutions would have more control over their own projects.

9. Conversely, it may be desirable to have a consistent approach to oversight of capital projects with procedures that do not change because a different source of funds is used. Oversight by DOA may also provide a certain level of uniformity across UW institutions. This may ensure that classroom facilities, laboratories, residence halls, dining facilities, student unions, and athletics facilities used by students on one campus are of the same quality as those on all others campuses. Coordination by DOA also allows for uniformity amongst the internal systems of all state buildings, such as electrical and heating and cooling, which may create efficiencies in terms of maintenance and repairs. In addition, operating costs associated with a project may be borne by state funds, even if the project is funded by gifts. As a result, state oversight may be appropriate to monitor the potential effects on the state's budget.

10. In addition, while permitting UW-Madison, UW System, or other UW institutions to manage their own projects would allow those entities to have more input into projects on their campus, the project manager selected by a UW institution would not be the end user of the project any more than a project manager selected by DOA would be. Ultimately, UW students, faculty, and other staff will be the users of the building, not the project manager. As the state will fundamentally be the owner of any UW building project regardless of the fund source, it may be reasonable for the state, through DOA, to manage such projects.

11. Under current law, DOA is permitted to charge state agencies for the architectural, engineering, project management, and other services it provides to state building projects. Under current practice, DOA charges a fee equal to 4% of the total cost of the project. These fees support the Division of State Facilities (DSF) within DOA. UW-Madison and UW System contend that the fees collected by DSF often exceed the amount of services provided. While this may be less of a concern for projects that are funded in whole or in part with GFSB, it may be inappropriate for

student fees or gift and grants provided to support a specific project to be used to fund a division of a state agency. In addition, in years when fees collected by DSF have exceeded the operating budget of that division or state budget acts have required lapses from agencies, some portion of these fees have been transferred to the general fund and used to support activities unrelated to state building projects.

12. However, if UW-Madison projects funded entirely with sources other than state GFSB or GPR were no longer subject to the 4% fee, DSF may have to increase the fees charged to other agencies or decrease the level of service provided. Fees charged to non-GFSB, non-GPR projects are a substantial source of revenue for DSF. Over the past six years, fees charged to UW-Madison building projects funded entirely with sources other than GFSB and GPR have been on average more than 20% of all total fees collected. Fees charged to all such UW projects, including UW-Madison projects, have been on average one-third of total fees collected. If these projects were no longer subject to the DSF 4% fee, DSF would have to reduce its staff. To the extent that the amount of work required decreases by the same amount as the fees collected, services to the other agencies would not be affected. However, if the projects that remain in DSF's portfolio are generally more costly to manage, DSF may have to increase the fees charged to these other projects. In addition, some general efficiencies may be lost. DSF, which oversees all state building projects, currently employs individuals with expertise in certain niche areas such as roofing and heating and cooling systems. If UW non-GFSB, non-GPR projects are exempt from the DSF fee, DSF may no longer be able to afford to keep these specialists on staff. This may result in cost increases to individual projects when work previously performed by these employees would be contracted out on a project-by-project basis.

13. UW-Madison has indicated that if non-GFSB, non-GPR projects were to be exempt for DOA supervision and oversight, it would continue to use DSF's services for projects currently in progress with those projects being charged the 4% fee. This approach of phasing-out the use of DSF services by UW-Madison would protect DSF from abrupt changes in funding levels and give DSF time to plan for a future decline in revenues. In addition, UW-Madison has indicated that it would continue to use certain services offered by DOA, such as project management software, for which it would contract with DSF.

14. In addition, one of DSF's functions is to staff the state Building Commission. To the extent that legislative oversight of state building projects is desired, it may be reasonable to charge UW projects that would otherwise be exempt from oversight by DSF some lesser fee to fund DSF's support of the Building Commission.

15. Under current law, any project with a cost over \$150,000 requires approval by the Building Commission regardless of fund source. This threshold was increased from \$100,000 under 2005 Act 391. Under the bill, UW-Madison non-GFSB, non-GPR projects with a cost of not more than \$500,000 would no longer require Building Commission approval. The UW System Board of Regents have similarly requested that non-GFSB, non-GPR projects at other UW institutions with costs of less than \$500,000 also be exempt from Building Commission approval. Projects of this size would generally be maintenance projects most of which would involve some amount of GFSB or GPR. However, these projects could also include maintenance and renovation projects funded with program revenue cash generated from student or other user fees. Exempting these projects

from Building Commission approval would allow the institutions to address small maintenance issues in a more timely fashion.

16. One related policy question involves the level of discretion that the Legislature is willing to provide to the UW System or UW-Madison. If the Legislature provides substantial flexibility over the operating budget by using a block grant approach, then it would seem inconsistent to maintain the fairly prescriptive current law provisions governing the building program. If the Legislature deems the Board of Regents or the proposed Board of Trustees capable of responsibly spending approximately \$700 million annually of GPR block grants, it seems inconsistent to require both DOA and Building Commission oversight for non-state funded projects.

17. As part of the Building Commission's recommendations for the 2011-13 building program, the various current law thresholds relating to oversight by DOA and the Building Commission would be indexed for changes in construction costs. It may be desirable to specify that whatever indexing, if any, is approved by the Committee in its action on the building program for the current law \$500,000 project enumeration requirement would also apply to the proposed \$500,000 threshold for non-state funded projects.

ALTERNATIVES

A. Oversight for Non-State Funded Projects with Costs Less than \$500,000

1. Approve the Governor's recommendations.
2. Modify the Governor's recommendations to apply these provisions to UW System, as well as UW-Madison.
3. Modify the Governor's recommendations to specify that the proposed indexing provisions included in the Building Commission's recommended building program would apply to the \$500,000 threshold under this provision.
4. Delete provision.

B. Bidding

1. Approve the Governor's recommendations.
2. Modify the Governor's recommendations to specify that current law bidding provisions would apply to UW-Madison and UW System non-GFSB, non-GPR projects.
3. Modify the Governor's recommendations to specify that the Board of Trustees, in the case of UW-Madison, or the Board of Regents, in the case of the UW System, would be required to adopt policies to ensure public, competitive bidding.

Prepared by: Dave Loppnow and Emily Pope