



State of Wisconsin
2023 - 2024 LEGISLATURE

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2023 SENATE BILL 932

January 19, 2024 - Introduced by Senator BALLWEG, cosponsored by Representatives BORN, ARMSTRONG, DONOVAN, GUNDRUM, HURD, KRUG, MURPHY, MURSAU, NEDWESKI, NOVAK, O'CONNOR, PLUMER, SCHMIDT, SWEARINGEN and WITTKE. Referred to Committee on Government Operations.

AN ACT *to renumber and amend* 775.01; *to amend* 13.48 (4), 16.867 (2) and 20.924 (1) (d); and *to create* 13.48 (19) (am), 16.007 (2m), 16.40 (20b), 16.855 (3m), 16.858 (3m), 16.867 (3), 16.899 and 775.01 (2) of the statutes; **relating to:** modifications to building program project budgets, selection of project architects and engineers, single prime contracting, agency cooperation with energy conservation contractors, timeline for claims before the Claims Board, and making a transfer to the state building trust fund.

Analysis by the Legislative Reference Bureau

MODIFICATIONS TO BUILDING PROGRAM PROJECT BUDGETS

Under current law, the Building Commission has the authority to authorize limited changes in the program or budget of a building program project if the commission determines that unanticipated program conditions or bidding conditions require the change to effectively and economically construct the project.

Under this bill, the commission may not increase the budget of a project enumerated in the state building program by more than 10 percent without

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submitting the proposed project budget increase for approval by the Joint Committee on Finance under passive review.

The bill also requires that the Department of Administration submit a quarterly report to JCF and each voting member of the Building Commission that identifies each project for which the Building Commission has approved a budget increase and identifies each project enumerated in the state building program for which DOA estimates a budget increase will be necessary for project completion, including a description of the reasons for the project budget shortfall.

SELECTION OF PROJECT ARCHITECTS AND ENGINEERS

Under current law, the secretary of administration is required to establish a committee for each construction project under DOA's supervision, except certain emergency projects, for the purpose of selecting an architect or engineer for the project. If the estimated cost of a construction project is \$7,400,000 or more, the selection committee must use a request-for-proposal process established by DOA to select an architect or engineer for the project based on qualifications. The bill raises that threshold to \$15,000,000.

Additionally, the bill prohibits such a committee from refusing to select an architect or engineer who operates an architect or engineering firm with only one responsible architect or engineer for a construction project that has an estimated cost of less than \$2,000,000. The bill also allows DOA to increase this threshold up to \$15,000,000.

SINGLE PRIME CONTRACTING

The bill creates a new exception to single prime contracting for high-dollar building projects. Single prime contracting is a process in which the state contracts only with a general prime contractor who then must contract with subcontractors.

Under current law, 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.

Under the bill, for any project costing \$200,000,000 or more, at the request of the agency for which the project is constructed, the Building Commission is required to waive certain single prime contracting requirements for the project, as requested by the agency.

CERTAIN PROJECT BIDDING PROCEDURES

Under the bill, at any time more than two days prior to the end of the period during which bids may be submitted for a building project, a bidder or potential bidder may submit a question to DOA concerning the project. Additionally, the bill provides that DOA may issue addenda at any time during the bidding period to modify or clarify the drawings and specifications for the project being bid or to extend the bidding period.

SENATE BILL 932**COOPERATION WITH ENERGY CONSERVATION CONTRACTORS**

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. The bill requires DOA and the Board of Regents of the University of Wisconsin System 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.

UTILITIES COSTS

The bill provides that each state contract for construction work must 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.

ACTIONS AGAINST THE STATE RELATED TO CERTAIN CONTRACT CLAIMS

Under current law, the Claims Board is required to receive, investigate, and make recommendations on all claims against the state of \$10 or more that are referred to the board by the Department of Administration. The board is required to report its findings and recommendations on all claims referred to the board to the legislature. The board may deny a claim, directly pay a claim of up to \$10,000, or recommend a payment in excess of \$10,000 to the legislature. If the board concludes that a claim should be paid by the state and the board does not or may not directly pay the claim, current law requires the board to cause a bill to be drafted covering its recommendations. A claimant may commence a lawsuit against the state upon the refusal of the legislature to pass a bill allowing a claim.

This bill creates a timeline for the board to hear and make a final determination upon certain claims related to contracts and, in addition to current law, allows claimants to bring actions against the state related to certain contract claims if certain conditions are met. Under the bill, any claim referred to the board that relates to a contract with the Department of Transportation for transportation infrastructure improvement or that relates to a contract with DOA or the Board of Regents of the University of Wisconsin System that is awarded under current law for construction projects must be heard by the board, and the board must make a final determination on the claim, within six months from the day that the claim was referred to the board. If the board concludes that the facts of the claim would be more properly adjudicated in a court of law or if the board fails to make a final determination on the claim within six months from the date that the claim was referred to the board, the bill allows the claimant to commence an action against the state seeking judgment on the claim as provided under current law.

SENATE BILL 932**TRANSFER TO THE BUILDING TRUST FUND**

The bill transfers \$32,000,000 from the general fund to the building trust fund in fiscal year 2023-24.

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:

SECTION 1. 13.48 (4) of the statutes is amended to read:

13.48 (4) STATE AGENCIES TO REPORT PROPOSED PROJECTS. Whenever any state agency contemplates a project under the state building program it shall report the project to the building commission. The report shall be made on such date and in such manner as the building commission prescribes. Each state agency submitting a report to the building commission under this subsection shall at the same time submit the report to the joint committee on finance. This subsection does not apply to projects identified in sub. (10) (c).

SECTION 2. 13.48 (19) (am) of the statutes is created to read:

13.48 (19) (am) 1. In this paragraph, “agency” has the meaning given in s. 16.52 (7).

2. For any project costing \$200,000,000 or more, at the request of the agency for which the project is constructed, the building commission shall waive the requirements under s. 16.855 for the project, except s. 16.855 (13) and (14m) (a) to (c), as requested by the agency.

SECTION 3. 16.007 (2m) of the statutes is created to read:

16.007 (2m) TIMELINE FOR CERTAIN CLAIMS. Any claim referred to the board that relates to a contract with the department of transportation for transportation

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infrastructure improvement or to a contract with the department of administration or the Board of Regents of the University of Wisconsin System that is awarded under s. 16.855 shall be heard by the claims board and the claims board shall make a final determination upon the claim within 6 months from the date that the claim was referred to the claims board.

SECTION 4. 16.40 (20b) of the statutes is created to read:

16.40 **(20b)** BUILDING PROGRAM CHANGES. Submit a quarterly report no later than the last day of the month following the end of each calendar quarter to the joint committee on finance and each voting member of the building commission that includes all of the following:

(a) An identification of each project for which the building commission approved during the quarter a budget increase under s. 20.924 (1) (d), including a description of the project and the amount of the increase.

(b) An identification of each project enumerated in the authorized state building program for which the department estimates a budget increase will be necessary for project completion, including a description of the project and the reasons for the project budget shortfall.

SECTION 5. 16.855 (3m) of the statutes is created to read:

16.855 **(3m)** (a) In this subsection, "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.

(b) At any time more than 2 days prior to the end of the bidding period, a

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bidder or potential bidder may submit a question to the department concerning the project being bid.

(c) The department may issue addenda at any time during the bidding period to modify or clarify the drawings and specifications for the project being bid or to extend the bidding period.

SECTION 6. 16.858 (3m) of the statutes is created to read:

16.858 (3m) The department and the Board of Regents of the University of Wisconsin System shall collaborate with energy service companies to identify and execute pilot projects under this section using financing provided by the companies to upgrade facilities, reduce deferred maintenance, and increase sustainability.

SECTION 7. 16.867 (2) of the statutes is amended to read:

16.867 (2) If the estimated cost of a construction project under the department's supervision is ~~\$7,400,000~~ \$15,000,000 or more, the selection committee appointed under sub. (1) shall use a request-for-proposal process established by the department to select an architect or engineer for the project based on qualifications.

SECTION 8. 16.867 (3) of the statutes is created to read:

16.867 (3) A committee appointed under sub. (1) may not refuse to select an architect or engineer for a construction project that has an estimated cost of less than \$2,000,000 because the architect or engineer operates an architect or engineering firm with only one responsible architect or engineer. The department may increase the threshold under this subsection as necessary, but may not exceed \$15,000,000.

SENATE BILL 932**SECTION 9**

SECTION 9. 16.899 of the statutes is created to read:

16.899 Utilities-related costs. Each contract for construction work under this subchapter shall 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.

SECTION 10. 20.924 (1) (d) of the statutes is amended to read:

20.924 (1) (d) Shall exercise considered judgment in supervising the implementation of the state building program, and may authorize limited changes in the project program, and in the project budget if the commission determines that unanticipated program conditions 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 shall not be exceeded, and the building commission may not increase the budget of any project enumerated in the authorized state building program by more than 10 percent without providing notice of the proposed increase to the joint committee on finance. If the cochairpersons of the committee do not notify the building commission within 14 working days after the date of the building commission's notice of the proposed project budget increase, the project budget may be increased as proposed by the building commission. If, within 14 working days after the date of the building commission's notice of the proposed project budget increase, the cochairpersons of the committee notify the building commission that the committee has scheduled a meeting for the purpose of reviewing the proposed project budget

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increase, the project budget may be increased by more than 10 percent only upon approval of the committee.

SECTION 11. 775.01 of the statutes is renumbered 775.01 (1) and amended to read:

775.01 (1) ~~Upon~~ Subject to sub. (2), upon the refusal of the legislature to allow a claim against the state the claimant may commence an action against the state by service as provided in s. 801.11 (3) and by filing with the clerk of court a bond, not exceeding \$1,000, with 2 or more sureties, to be approved by the attorney general, to the effect that the claimant will indemnify the state against all costs that may accrue in such action and pay to the clerk of court all costs, in case the claimant fails to obtain judgment against the state.

SECTION 12. 775.01 (2) of the statutes is created to read:

775.01 (2) Upon the conclusion of the claims board that the facts of a claim described under s. 16.007 (2m) would be more properly adjudicated in a court of law or upon the failure of the claims board to make a final determination on a claim described under s. 16.007 (2m) within 6 months from the date that the claim was referred to the claims board the claimant may commence an action against the state seeking judgment on the claim by service as provided in s. 801.11 (3) and by filing with the clerk of court a bond, not exceeding \$1,000, with 2 or more sureties, to be approved by the attorney general, to the effect that the claimant will indemnify the state against all costs that may accrue in such action and pay to the clerk of court all costs, in case the claimant fails to obtain judgment against the state.

SECTION 13. Fiscal changes.

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SECTION 13

(1) TRANSFER FROM THE GENERAL FUND TO THE STATE BUILDING TRUST FUND.

There is transferred from the general fund to the state building trust fund \$32,000,000 in fiscal year 2023-24.

(END)