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# MARK BORN

STATE REPRESENTATIVE • 39<sup>TH</sup> ASSEMBLY DISTRICT

## Testimony on Assembly Bill 956

Assembly Committee on State Affairs  
January 24, 2024

Thank you Representative Swearingen and committee members for convening today's public hearing on Assembly Bill (AB) 956. I drafted this bill after many months of consultations with partners throughout government and the private sector in hopes of creating efficiencies in how we maintain 6,300+ existing state-owned buildings and construct new buildings, while saving taxpayer dollars.

AB 956 includes the following ideas:

- Section 1: when state agencies submit their capital budget requests (typically in the fall of even-numbered years) to the Department of Administration (DOA), agencies would also submit their requests to the Legislature.
- Section 2: projects enumerated for more than \$200 million would be automatically eligible for "alternative delivery" contracting procedures (rather than standard single prime contracting procedures).
- Section 3: requires the Claims Board to hear certain contract dispute claims within six months of receiving the claim.
- Section 4: creates a quarterly reporting requirement from DOA to the Legislature for projects at risk of going over budget.
- Section 5: defines a period (after project design but before bids are due) when potential bidders can ask questions and request clarifications from DOA about the project's design drawings.
- Section 6: requires DOA and the University of Wisconsin System to identify some energy conservation pilot projects to be financed by the contractor.
- Sections 7-8: increases the dollar threshold at which DOA must use a request-for-proposals procedure to select architects and engineers and provides additional opportunities for small firms to be awarded these contracts.
- Section 9: requires project contracts to specify who is responsible for paying utility service connection charges and utility consumption charges at the project site.

- Section 10: if the State Building Commission votes to increase an enumerated project's budget by more than 10 percent, the bill requires legislative passive review before the project may proceed.
- Sections 11-12: for certain contract disputes, if the Claims Board (1) fails to reach a decision within six months of receiving the claim or (2) determines that the claim would be more properly adjudicated in court than in the Claims Board, then the claimant may commence a legal action against the state without waiting (as required under current law) for the expiration of the current legislative session.
- Section 13: transfers \$32 million GPR from the Joint Finance Committee's supplemental appropriation to the Building Trust Fund—which, when combined with other monies authorized in the 2023-25 state budget, adds \$50 million in this biennium to the revolving fund that DOA uses to design projects.

In addition, I will be introducing an amendment to Section 2 (intended to exempt the largest construction projects from single prime contracting procedures) of the legislation due to a drafting error. The LRB analysis accurately states my intent, but the bill text does not match the LRB analysis.

Thank you for your time and consideration of AB 956.



DATE: January 24, 2024

TO: Members of the Assembly Committee on State Affairs

FROM: Universities of Wisconsin Office of Government Relations

RE: Written Testimony for Information Only on Assembly Bill 956

Thank you, Chair Swearingen and committee members, for providing the Universities of Wisconsin (UWs) an opportunity to provide testimony on Assembly Bill 956 (AB 956). We appreciate Representative Born's and Senator Ballweg's goal to modify thresholds and increase investments in planning of Wisconsin's building program. We concur that these changes will improve the outcome of our projects.

The Universities of Wisconsin has more than 69 million square feet in about 1,800 buildings across our 13 universities, and we manage the building program collaboratively with our state partners. The goal of our building program is to meet the state's workforce needs. Each project goes through a rigorous review process ensuring aspects like safety, market demands, and enrollment trends of programs and campuses impacted are considered. Our capital budget process begins almost immediately after each biennial budget is signed; and includes meeting with campuses, reviewing their submissions, and analyzing against the Board of Regents (BOR) approved project evaluation criteria. Before submitting building projects as part of our state budget request, and before the State Building Commission (SBC) review, the BOR must also approve any UWs capital projects. Meeting Wisconsin's workforce needs is our primary goal throughout this arduous building approval process.

Assembly Bill 956 makes several changes to Wisconsin's building program, and we support the following three areas of the proposed legislation.

First, AB 956 will help streamline projects by allowing any project enumerated for more than \$200M to be automatically eligible for alternative delivery. Alternative delivery is a project delivery process that allows for the selection of a contractor in the early stages of the project—but we are still required to hard bid for components of the project; mechanical, electrical, plumbing, and fire protection. Some projects are better suited for alternative delivery as it allows for increased communication between all parties and stakeholders at the beginning of the design process. With alternative delivery, we can complete our larger building projects in a timelier manner because it permits us to work closely with construction professionals to select materials, buildings systems, and resolve schedule and site logistical challenges in the early stages.

Additionally, the Universities of Wisconsin supports increasing the thresholds from \$7.4M to \$15M for using requests for proposal (RFPs) to select architecture/engineering (A/E) firms. Projects in this price range are some of our highest priorities as they include the repairs, internal system upgrades, and maintenance our buildings need to operate. Fire alarm systems are one example of this type of project.

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Currently, we need to interview A/E's for projects of this nature between \$3M and \$7.4M. Requiring full interviews for these type of repair or maintenance projects is time consuming and costly to the A/E community. Bypassing these full interviews will help us expedite smaller maintenance projects more readily. Costs of these projects have increased since these statutes were first drafted and the proposed changes can better address the size and scope of the project budgets coming forth today.

Finally, this bill would transfer \$32M from the general fund to the state's Building Trust Fund Account (BTF) in fiscal year 2023-24. We are very supportive of this provision since any cash in this fund is eligible for building design purpose use. The UW's has been a leader in using BTF planning dollars to scope projects so they are shovel ready by the time they are enumerated and brought before SBC. For example, the UW-River Falls Science and Technology Building and the UW-Eau Claire Science/Health Sciences buildings both received BTF for planning. These projects have been enumerated, one is in construction and the other is going to be bid in the next few months. The BTF account is designed to support these pre-enumeration activities so that projects can lead to better outcomes by establishing programmatic needs, determining the project schedule and phasing, and most importantly, developing a project budget prior to enumeration. Increasing the pot of money in the BTF will help our building projects continue to move forward so that they are shovel ready upon enumeration.

While we are supportive of the above items, we would recommend some possible change to alleviate some concerns as currently drafted. We are working with the authors to address these items, to balance legislative intent and ensure we can still manage our program projects efficiently. The legislation would require the Joint Finance Committee (JFC) to approve an increase in project cost of over 10% the enumerated amount for any building project. We would suggest that projects funded entirely with non-state dollars or budget increases addressed utilizing non-state dollars, would be exempt from this approval process. Requiring non-state dollar budget increases to be approved by JFC will slow down the process and could inhibit donors from providing additional funds to a project after enumeration. Additionally, one of our biggest challenges is keeping current with our research program. From time to time, we receive grant funds to advance research activities after a project has been enumerated or even in construction, or we develop industry partnerships that necessitate additional space or equipment during design or construction. Accommodating workforce needs or advancing the research mission of an institution is a stated goal of the Universities of Wisconsin.

Additionally, we would recommend clarity around the reporting provisions in this legislation. AB 956 would require submission of quarterly reports to the voting members of the SBC and JFC. It is unclear what information is required to be included in this report and which state agency will be responsible for submitting it to the SBC and JFC.

Again, we want to reiterate that we appreciate the bill authors' goal to modernize Wisconsin's building program and thank them for ongoing conversations with us on the best way to achieve these goals. The Universities of Wisconsin appreciate the opportunity to provide testimony on AB 956.



**WISCONSIN**  
UNIVERSITY OF WISCONSIN-MADISON

**Assembly Committee on State Affairs**  
**2023 Assembly Bill 956**

January 24, 2024

**Modifications to the State Building Program**

Chairman Swearingen and members of the Assembly Committee on State Affairs:

Thank you for the opportunity to provide written testimony for information only on Assembly Bill 956, relating to the state building program, project budgets, transfer to the State Building Trust Fund, selection of project engineers and architects, single prime contracting, among other proposed changes. The University of Wisconsin-Madison thanks the bill authors, Representative Born and Senator Ballweg, for their ongoing and thoughtful engagement related to the state building program and project delivery.

UW-Madison shares the goals of the authors to ensure that state investments in our institutions of higher education are used in a cost-effective and efficient way to support the students, faculty, and staff and in fulfilling our missions of teaching, research, and outreach. In order to continue fulfilling our mission, one of our key responsibilities is to manage and invest in our physical footprint and infrastructure. UW-Madison Facilities Planning & Management (FP&M) is responsible for the building, maintenance, and operation of 939 acres on the main campus including over 400 buildings with approximately 25 million gross square feet.

In working with our partners in state government including the Wisconsin State Legislature, Department of Administration (DOA), and the Universities of Wisconsin Administration, UW-Madison contributes to a multi-step process that works with contractors, architects, and engineers selected as outlined in state law that includes the bidding, design, and building of campus facilities. Last year, FP&M was responsible for helping to deliver approximately \$1.6 billion in capital budget and maintenance for the campus. We are appreciative of the state and private support for our capital program.

This testimony focuses on a few key changes proposed by the bill that we believe will have a positive impact on operations and process for UW-Madison: first, the increased flexibility around alternative delivery for projects over \$200 million. Second, the increase of thresholds for using request for proposals (RFPs) to select architecture/engineering (A/E) firms. Third, the transfer of \$32 million to the Building Trust Fund (BTF) for the design of projects.

First, the changes proposed that provide flexibility related to alternative delivery for projects over \$200 million will be helpful. These changes will result in increased communication between all parties and stakeholders at the beginning of the process of managing these large and complex projects. As the flagship institution of public higher education in the state, some of our infrastructure projects are unique and will

benefit from an alternative delivery model. One example of this is the Camp Randall South End Zone Project, a significant project that came in under budget and on time utilizing alternative delivery. Using alternative delivery methods on projects allows for expedited design and construction, as well as earlier technical expertise during the design process.

Second, increasing the threshold to \$15 million for requiring the use of RFPs to select A/E firms will allow us to move forward in a timelier manner on smaller projects. Due to inflation, the list of projects that would qualify under existing thresholds is significantly smaller than it once was, and many of these include renovations or critical maintenance on existing buildings.

Third, we support the transfer of \$32 million from the general fund to the Building Trust Fund to facilitate project design. Additional resources for this purpose will help prevent delays in design that prevent projects from moving forward for consideration by legislators in the capital budget process. UW-Madison currently works with its state partners to use institutional resources to support design where it makes sense and could benefit from additional Building Trust Fund dollars like other campuses.

There are a couple of suggested amendments that we have flagged and will continue to discuss with the bill authors. Section 10 of the legislation would require Joint Finance Committee approval for an increase to any project in the authorized building program more than 10% of the enumerated amount. When this overage occurs, it can be due to bids returning over budget, which is out of our control. If this change in process is desired, one suggested amendment for the bill authors is to clarify that project increases funded entirely with non-state dollars (gifts, grants, and cash) that alter the total cost of the project by more than 10% would not be subject to Section 10 of the bill. It is not uncommon for funding from private donors and other sources of revenue that will allow the university to further enhance a building project to emerge during the construction process. For example, the School of Veterinary Medicine raised approximately \$18 million in private funds to cover the cost of technical equipment for the veterinary hospital and research labs. The ability to utilize non-state funding sources without having to seek additional legislative approval would allow the projects to keep moving forward without the potential for delay.

Another suggested amendment for consideration is to clarify the reporting provisions in the legislation. Section 1 requires state agencies to submit projects they are contemplating for inclusion in the state building program. Universities of Wisconsin and UW-Madison are currently required to develop a six-year, three-biennial budget proposal approved by the Board of Regents. We would request to have that six-year plan count toward this reporting provision. We would also appreciate clarity around Section 4 of the bill to specify which state agency will be the one putting together and submitting the quarterly report to the State Building Commission and the Joint Finance Committee.

Again, UW-Madison shares the goals of the authors to streamline the existing process with our stakeholders, improve communication and planning, and to continue to innovate in this space. Thank you again for the opportunity to provide testimony on the impact this legislation would have on UW-Madison. If you have questions, please reach out to Senior Director of State Relations Crystal Potts ([crystal.potts@wisc.edu](mailto:crystal.potts@wisc.edu); 608-265-4105).