



## 2011 SENATE BILL 571

March 15, 2012 – Introduced by Senators LASSA and VINEHOUT, cosponsored by Representatives JORGENSEN, ROYS, TURNER and RINGHAND. Referred to Committee on Senate Organization.

1     **AN ACT to renumber and amend** 16.705 (6); **to amend** 16.705 (7); and **to create**  
2             16.705 (5g), (5m) and (5r) and 16.705 (6) (a) of the statutes; **relating to:** state  
3             contractual services and requiring the exercise of rule-making authority.

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### *Analysis by the Legislative Reference Bureau*

Currently, the Department of Administration (DOA) or any state agency to which DOA delegates purchasing authority may contract for services if the services can be performed more efficiently or economically by contract than by state employees. This bill generally requires that, if a contract is for more than \$50,000, any expenditures of the contractor that exceed the bid by more than 10 percent may be paid only if the agency for which the contractual services are performed notifies the governor and the joint committee on finance the amount by which the cost exceeds the original bid and the reason for the increase. The bill requires the Division of Legal Services in DOA to develop standard performance measures, as well as benchmark indicators, to evaluate services performed by contract for a state agency and to determine what actions taken by the contractor would result in the state agency recovering the expenditures it paid to the contractor.

Under current law, if a state agency for which services are performed concludes that the services were unsatisfactory, the agency must file an evaluation with DOA, and DOA must ensure that future contracts are not awarded to contractors whose past performance was unsatisfactory. The bill adds that a state agency must file an evaluation with DOA if the contractual services are unsatisfactory according to the standard performance measures or benchmark indicators developed by the Division

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of Legal Services or if the state agency recovers expenditures from the contractor under the guidelines developed by the Division of Legal Services.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 16.705 (5g), (5m) and (5r) of the statutes are created to read:

2           16.705 **(5g)** All contracts for contractual services must provide notice of the  
3 rules promulgated by the division of legal services under sub. (5m) (a) and of the  
4 requirements under sub. (5r).

5           **(5m)** The division of legal services shall promulgate rules on all of the  
6 following:

7           (a) Actions by the person performing the contractual services that would result  
8 in the agency for which the contractual services are performed recovering any  
9 expenditures for those contractual services that the agency paid to the person  
10 performing the contractual services.

11           (b) Standard performance measures, including quantifiable benchmark  
12 indicators, to evaluate persons performing contractual services.

13           (c) Signing bonuses, reimbursements, and per diem costs included in all  
14 contracts for contractual services.

15           **(5r)** (a) 1. If the cost of the contractual services exceeds \$50,000, any  
16 expenditures of the person performing the contractual services that exceed its  
17 original bid by 10 percent of more may not be paid unless the agency for which the  
18 contractual services are performed notifies the governor and the joint committee on  
19 finance the amount by which the cost exceeds the original bid and the reason for the  
20 increase.

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1           2. Subdivision 1. does not apply to contractual services purchased for the  
2 University of Wisconsin System, or for any University of Wisconsin System campus  
3 or institution, if the contractual services are for research or instructional purposes,  
4 as determined by the University of Wisconsin System or the campus or institution,  
5 whichever is appropriate.

6           (b) No person performing contractual services under this section may provide  
7 any salary increase if the salary increase would result in greater expenditures for the  
8 agency for which the contractual services are performed than the amounts specified  
9 in the original bid. The restriction under this paragraph regarding salary increases  
10 does not apply if the salary increase is in accordance with the terms of a collective  
11 bargaining agreement.

12           **SECTION 2.** 16.705 (6) of the statutes is renumbered 16.705 (6) (b) and amended  
13 to read:

14           16.705 (6) (b) If the agency for which contractual services are performed under  
15 a contractual services agreement concludes under par. (a) that the performance was  
16 unsatisfactory, recovers expenditures because the contractor's actions were listed in  
17 the rules developed under sub. (5m) (a), or concludes that the performance was  
18 unsatisfactory based on factors that the agency considers, the agency shall file with  
19 the department an evaluation of stating that the contractor's performance was  
20 unsatisfactory within 60 days after the fulfillment of the agreement. The evaluation  
21 shall be in such form as the secretary may require.

22           **SECTION 3.** 16.705 (6) (a) of the statutes is created to read:

23           16.705 (6) (a) An agency for which contractual services are performed under  
24 a contractual services agreement shall evaluate the contractual services using the

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**SECTION 3**

1 standard performance measures and benchmark indicators created under sub. (5m)

2 (b). No contract may be renewed until the agency completes the evaluation.

3 **SECTION 4.** 16.705 (7) of the statutes is amended to read:

4 16.705 (7) The department shall review evaluations submitted under sub. (6)

5 (b) and promulgate rules prescribing procedures to assure that future contracts for

6 contractual services are not awarded to contractors whose past performance is found

7 to be unsatisfactory, to the extent feasible.

8 **SECTION 5. Initial applicability.**

9 (1) This act first applies to solicitations for contractual services issued on the  
10 effective date of this subsection.

11 (END)