



**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

SCOTT WALKER
GOVERNOR

MIKE HUEBSCH
SECRETARY

Office of the Secretary
Post Office Box 7864
Madison, WI 53707-7864
Voice (608) 266-1741
Fax (608) 267-3842

April 23, 2013

The Honorable Alberta Darling, Co-chair
Joint Committee on Finance
317 East, State Capitol
Madison, WI 53702

The Honorable John Nygren, Co-chair
Joint Committee on Finance
309 East, State Capitol
Madison, WI 53702

Dear Senator Darling and Representative Nygren:

As with every biennial budget process, modifications to correct errors or better reflect the Governor's intent in preparing the budget are required. The Governor would like to have the conceptual changes outlined below added to or modified in 2013 Assembly Bill 40, the 2013-15 biennial budget bill. The net result of these changes will increase the general fund balance by \$132,600. Also, in light of the revelations regarding the University of Wisconsin System's reserves, the Governor will be submitting a second letter in the near future outlining a proposal for additional changes to the budget bill.

1. Fringe Rate Calculation

Due to a formula error in the agency fringe rate calculation, agency prior service obligation rates need to be adjusted. An additional \$6,046,200 GPR per year is required. This error can be partially offset by using an additional \$6.2 million of Targeted Case Management funds identified by the Department of Health Services. The remainder can be offset by the next item.

2. Debt Service Reestimates

The debt service estimates included the bonding for the Stillwater Bridge project (s. 20.866(2)(ugm), Wis. Stats.) as GPR-supported debt service (s. 20.395(6)(af), Wis. Stats.), whereas it should be SEG-supported debt service (s. 20.395(6)(aq), Wis. Stats.). GPR expenditures should be reduced by \$625,000 GPR in fiscal year 2013-14 and by \$5,262,100 GPR in fiscal year 2014-15. SEG expenditures should be increased in an equal amount, respectively, in fiscal years 2013-14 and 2014-15.

3. TANF Ending Balance

The Department of Children and Families has reestimated revenues and expenditures in the Temporary Assistance to Needy Families (TANF) program, resulting in a

reestimated TANF ending balance of \$8.2 million by the end of fiscal year 2014-15. This reestimate is largely based on new information but does include several technical errata identified by the Legislative Fiscal Bureau. The Governor recommends that approximately \$4.4 million be used to expand transitional jobs to other high need urban areas in the state, potentially update the W-2 benefits estimate in light of additional caseload data and provide additional funding for child care rates.

4. Out-of-Home Care Reestimate

The Department of Children and Families has reestimated the cost of the extension of out-of-home care to age 21 for youth who are in school and making progress on individualized education programs. The reestimate assumes a higher placement cost due to the corrected assumption that youth may be in more expensive placements than foster care. The Governor recommends delaying the effective date of this initiative to the beginning of fiscal year 2014-15 to offset the increased cost.

5. Sales of Assets

- a) Modify provisions allowing the Department of Administration to contract with a purchaser or lessee for operation of a state-owned property or facility (including a heating, cooling or power plant) to only allow the department to contract for the output of a heating, cooling or power plant.
- b) Clarify s. 16.84 so that the department will not have charge of, operate, maintain and keep in repair any heating, cooling or power plant serving state properties once that plant has been sold or leased.
- c) Modify s. 16.848(1) to add language stating that the department may sell or lease a property without the approval of the agency having jurisdiction over the property (intent is for language to mirror changes to s. 13.48(14)(am)).
- d) Modify ss. 13.48(14) and 16.848(2), so that they do not apply to real estate portfolio transactions related to investments of the employee trust fund made by the State of Wisconsin Investment Board under s. 25.17(8).
- e) Also specify that the UW Board of Regents is required to submit a biennial inventory of all real property under its jurisdiction to the Department of Administration and specifically identify any underutilized assets but is not required to include the estimated fair market value of each property.

6. Single Prime Contracting

- a) Revise deadlines for the Department of Administration's posting notice of the lowest qualified responsible bidders and making the bids available.
- b) Modify sections pertaining to the standard form contract and bid alternates.
- c) Modify language related to bond and license requirements, making general bid tabs publicly available, and notification of the successful general prime contractor.
- d) Clarify that the department's role in qualifying subcontractors also applies when alternative delivery methods are utilized.

Proposed statutory revisions are attached to this letter.

7. Broadband Grant Program

In the budget bill, \$4.7 million SEG is appropriated in fiscal year 2013-14 from the universal service fund to fund a new broadband expansion grant program for underserved areas. The intent was to use the unencumbered balance of the fund, which has subsequently been reestimated to \$500,000, and to not increase utility assessments or impact current law programs supported by the fund. The statutory language and appropriations should be modified to spend any unencumbered balance of the Universal Service Fund and not be limited to fiscal year 2013-14.

8. IT Expenditure Authority

The budget bill provided \$5.5 million PR in expenditure authority for s. 20.505(1)(is), \$1.5 million of which was intended for hosting mainframe services for the UW System and disaster recovery services for other states. As the UW System is not considered a nonstate entity, this \$1.5 million in expenditure authority should be transferred to the appropriation under s. 20.505(1)(kL).

9. Foreign Ownership of Land

The budget provision related to foreign ownership of land addresses conflicts with international treaty language on land acquisition. The bill eliminates s. 710.02, Wis. Stats., which places limitations on ownership of land by nonresident aliens and corporations. To better reflect the Governor's intent, statutory language should be modified to restore s. 710.02 and amend s. 710.02(2)(b) to remove "citizens, foreign governments or subjects of a foreign government"; instead, this language will more broadly apply to any entity whose rights to hold larger quantities of land are secured by treaty.

10. "Bond" Definition

The budget provision defining a "bond" for purposes of the Public Finance Authority, as drafted, does not reach the intent of the recommended statutory change. The intent of the provision is to clarify that bonds that are purchased by the Public Finance Authority but not issued by it are included in the definition of "bond" under s. 66.0304(1)(b), Wisconsin Statutes. To better reflect the intent, 2013 Assembly Bill 40 should be modified to remove the reference to "a commission" in section 1266 as it amends s. 66.0304(1)(b).

11. Federal Air Permit Fees

The budget contains increases to fees charged to companies permitted under the Title V air pollution program to address federal requirements for program solvency. However, the fee amounts included in the budget were calculated from outdated emission data. After reviewing the revised data, the total revenue needed to properly administer the program and meet federal requirements can be reduced. Instead of increasing the emission fee charged per ton, a tiered facility fee structure would be implemented to better capture program costs required by the federal program. Specifically, the new structure would retain the current emission fee of \$35.71 per ton and add the following fees paid by the owner or operator of a stationary source that requires a Title V operation permit under the federal Clean Air Act: an annual base fee of \$3,000; if one or more maximum achievable control technology standards apply to the source, an annual fee of \$960; if one or more new source performance standards apply to the source, an annual fee of \$960; if federal prevention of significant deterioration permitting applies to the source, an annual fee of \$1,500; and if the source is an electric generating source that included a coal-fired generating unit and the source is not publicly owned, an annual fee of \$46,980.

12. School District Consolidation Aid

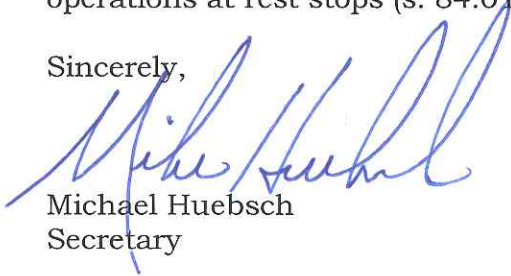
The budget bill extended the time period that a consolidated school district can receive consolidation aid, but gradually decreased the aid over the extension period. For consolidation aid received by a district due to the "hold harmless," which prevents a consolidated district's total aid from falling below the aid of the underlying districts immediately prior to consolidation, the budget bill reduced the hold harmless target to 66 percent of aid prior to consolidation in the sixth year after consolidation, and 33 percent of aid prior to consolidation in the seventh year after consolidation. To better reflect the Governor's intent, statutory language should be modified to apply the year six and year seven percentages to the amount of aid received in year five, rather than to the target.

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13. Department of Transportation Sponsorship Agreements

The budget bill includes a provision allowing the Department of Transportation to enter into sponsorship agreements with businesses, allowing the placement of signs and other advertisements in state-owned rest areas and highway right-of-ways. One portion of this provision can be interpreted to allow the operation of commercial activities at rest stops, which was not the Governor's intent. To better reflect the Governor's intent the statutory language creating the possibility for commercial operations at rest stops (s. 84.01(36)(c)) should be removed from the budget bill.

Sincerely,



Michael Huebsch
Secretary

Enc.

cc: Members, Joint Committee on Finance
Bob Lang, Legislative Fiscal Bureau

AMENDMENT TO BUDGET BILL (ASSEMBLY BILL 40)

#1 AMEND SECTION 144:

16.855(9m)(b)2.

c. The bidder is bondable for the term of the proposed contract and can obtain a separate 100% performance and separate 100% payment bond.

k. In any jurisdiction, in the previous 10 years, the bidder has not been disciplined under a professional license and none of the bidder's employees and no member of the bidder's organization has been disciplined under a professional license currently in use.

#2 AMEND SECTION 146:

16.855 (13) (a) In any project under this section let under single prime contracting, the department shall identify, as provided under par. (c), ~~necessary~~ the mechanical, electrical, or plumbing subcontractors who have submitted the lowest bids and are qualified responsible bidders, ~~and a~~ A general prime contractor who is submitting a bid under sub. (14) shall include the ~~selected~~ subcontractors identified under this subsection.

(b) In any project under this section let under s. 13.48(19), the department shall identify, as provided under par. (c), the mechanical, electrical, or plumbing subcontractors who have submitted the lowest bids and are qualified responsible bidders. As directed by the department, the contractor selected by the state and awarded a contract under s. 13.48(19) shall then contract with the mechanical, electrical, or plumbing subcontractors identified as the lowest bidders who are qualified responsible bidders for the mechanical, electrical, or plumbing work under par. (c).

(c) For purposes of selecting subcontractors under par. (a) or (b), the department shall develop and administer an open and public bidding process and follow the requirements and procedures under sub. (2). Within 48 hours of the bid deadline under par. (a) or (b) submission, the department shall make available on the department Internet site the names of the bidders and the amount of the each bid. No more than 5 7 days after the bid deadline for bid submission, the department shall post on its website and provide public notice of the lowest bidders who are qualified responsible bidders. The department shall make available on its Internet site the bids, including the bid documents, identified under this paragraph as the lowest bidders and they shall be open to public inspection in accordance with ss. 19.35-19.36. No other bids under this paragraph may be on the Internet site or open to public inspection.

#3 AMEND SECTION 148:

16.855 (14) (am) Except as provided in s. 13.48 (19), the department shall let all construction projects that exceed \$185,000 through single prime contracting. The department shall not request or accept any bid alternates when letting a construction project through single prime contracting.

#4 AMEND SECTION 149:

16.855 (14) (b) (2) is created to read:

16.855(14) (b) (2) Except as otherwise provided by law, †The state shall not be liable for any damages to a subcontractor selected under s.16.855 (13) (a) that enters into a contract with a general prime contractor under s. 16.855 (14) (e).

#5 AMEND SECTION 150:

16.855 (14) (bm) If the bid is being let through single prime contracting, bidders for the general prime contractor who are responsible qualified bidders shall submit their bids to the department no later than 5 7 days after the successful subcontractor bids become available to the public under sub. (13) (b). Within 48 hours after the bid deadline for general prime contractors, the department shall make the bid tabs identifying the names of the general prime contractors who bid and their bid amounts publicly available on the department's website and, in the event that they are unavailable on the department's website, at the department's offices.

#6 STRIKE AND REPLACE SECTION 153:

(14m) Contracting with MEP Subcontractors.

(a) Any subcontract entered into between a general prime contractor and subcontractor under sub. (14)(e) or a contract entered into with a MEP subcontractor under sub. 13(b) is void unless it contains all four of the following clauses:

1. Prompt Payment

[General prime contractor] shall pay [MEP subcontractor] in accordance with s. 16.855(19)(b) for work that has been satisfactorily completed and properly invoiced by [MEP subcontractor]. A payment is timely if it is mailed, delivered or transferred to [MEP subcontractor] by the deadline set forth in s. 16.855(19)(b).

If [MEP subcontractor] is not paid by the deadline set forth in this subcontract, [general prime contractor] shall pay interest on the balance due from the eighth day after [general prime contractor's] receipt of payment from the Department of

Administration for the work for which payment is due and owing to [MEP subcontractor], at the rate specified in Wis. Stat. § 71.82(1)(a) compounded monthly.

[MEP subcontractor] receiving payment under this section shall pay lower-tier subcontractors, and be liable for interest on late payments, in the same manner as [general prime contractor] is required to pay [MEP subcontractor].

2. Insurance and Bonds

[MEP subcontractor] shall not commence work under this contract until it has obtained all necessary insurance required of [MEP subcontractor] in [general prime contractor's] contract with the Department of Administration.

[MEP subcontractor] shall provide a separate 100% performance bond and a separate 100% payment bond to the benefit of the general prime contractor as the sole named obligee. Original bonds shall be given to the general prime contractor and a copy shall be given to the department no later than 10 days after execution of this subcontract.

3. Indemnification

To the fullest extent permitted by law, [MEP subcontractor] shall defend, indemnify and hold harmless [general prime contractor] and its officers, directors, agents, and any others whom [general prime contractor] is required to indemnify under its contract with the department, and the employees of any of them, from and against claims, damages, fines, penalties, losses and expenses, including but not limited to attorneys' fees, arising in any way out of or resulting from the performance of the work under this agreement, but only to the extent such claim, damage, fine, penalty, loss or expense: (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property, including but not limited to loss of use resulting therefrom and is caused by the negligence of or acts or omissions of [MEP subcontractor], its sub-subcontractors, any of their employees and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, or (2) as related to such claims, damages, fines, penalties, losses and expense of or against the [general prime contractor], results from or arises out of [general prime contractor]'s negligence or other fault in providing general supervision or oversight of [MEP subcontractor]'s work, or (3) as related to such claims, damages, fines, penalties, losses and expense against the department, arises out of the department's status as owner of the project or project site.

In addition, [MEP subcontractor] shall defend, indemnify and hold harmless [general prime contractor] and its officers, directors, agents, and any others whom [general prime contractor] is required to indemnify under its contract with the department, and the employees of any of them, from any liability (including

liability resulting from a violation of any applicable safe place act) that [general prime contractor] or the state incurs to any employee of [MEP subcontractor] or any third party where the liability arises from a derivative claim from said employee, when such liability arises out of the [general prime contractor's] or the state's failure to properly supervise, inspect, or approve [MEP's subcontractor's] work or work area, but only to the extent that such liability arises out of the acts or omissions of [MEP subcontractor], its employees, or anyone for whom [MEP subcontractor] may be liable, or from [MEP subcontractor's] breach of its contractual responsibilities or arises out of [general prime contractor]'s negligence or other fault in providing general supervision or oversight of [MEP subcontractor]'s work or arises out of the department's status as owner of the project or project site. In claims against [general prime contractor] or the state by an employee of the [MEP subcontractor] or its subcontractors or anyone for whose acts [MEP subcontractor] may be liable, the indemnification obligation of this paragraph shall not be limited by a limitation on amount or type of damage, compensation, or other benefits payable by or for the [MEP subcontractor] or its subcontractors under workers' compensation act.

Except as identified above in this section, the obligations of [MEP subcontractor] under this indemnification shall not extend to the liability of [general prime contractor] and its agents or employees thereof arising out of (1) preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications; (2) the giving of or failure to give directions or instructions by the [general prime contractor] or the department or their agents or employees thereof provided such giving or failure to give is the cause of the injury or damage; or (3) the acts or omissions of other subcontractors.

4. Retainage

Retainage shall occur and be in amounts and on a schedule equal to that in [general prime contractor's] contract with the Department of Administration.

(b) Any subcontract entered into between a general prime contractor and subcontractor under sub. (14)(e) must include a scope of work clause that is identical to that on which the subcontractor bid under sub. (13).

(c) A general prime contractor and subcontractor under sub. (13)(a) are prohibited from entering into any other agreements in connection with bids submitted under subs. (13) or (14) that would somehow alter or affect the scope or price of the contract or subcontract except for 1.) any change orders by the department that result in changes to the plans or specifications or 2.) any backcharges allowed by the subcontract.

(d) When the building commission approves an alternative delivery method under s. 13.48(19), a contractor shall be subject to the requirements in this section except for sub. par. (14m)(e) when working with any mechanical, electrical, or plumbing subcontractors.

(e) Unless otherwise agreed to by the mechanical, electrical and plumbing subcontractors, the general prime contractor shall base its project schedule on the duration set forth in the project specifications or bid instructions.

#7 AMEND SECTION 152:

16.855 (14) (e) Within 30 days after the deadline under par. (bm), the department shall ~~notify~~ identify the successful general prime contractor who was selected consistent with 16.855 (14) (d) and then notify this successful general prime contractor of its selection. The contractor who is awarded the contract shall enter into contracts with the mechanical, electrical, or plumbing subcontractors selected under par. (13) (a) and shall comply with the requirements under sub. (14m). The department shall make the final bid results available on its Internet site at the time it provides the written, official notice to the successful general prime contractor bidder notifying the contractor that the contract is fully executed and that the contractor is authorized to begin work on the project.

#8 AMEND SECTION 155:

16.855 (19) (b) As the work progresses under any subcontract under sub. (14) (e) for construction of a project, the general prime contractor shall, upon request of a subcontractor, pay to the subcontractor an amount equal to the proportionate value of the subcontractor's work properly completed ~~done~~, less retainage. The retainage shall be an amount equal to not more than 5 percent of the subcontractor's work completed until 50 percent of the subcontractor's work has been completed. At 50 percent completion, no additional amounts may be retained, and partial payments shall be made in full to the subcontractor unless the department certifies that the subcontractor's work is not proceeding satisfactorily. At 50 percent completion or any time thereafter when the progress of the subcontractor's work is not satisfactory, additional amounts may be retained but the total retainage may not be more than 10 percent of the value of the work completed. Upon substantial completion of the subcontractor's work, any amount retained shall be paid to the subcontractor, less the value of any required corrective work or uncompleted work. All payments the general prime contractor makes under this paragraph shall be within 7 calendar days after the date on which the general prime contractor receives payment from the department for the same ~~work performed~~.

#9 STRIKE SECTION 9101.