

1989 Senate Bill 342

Date of enactment: **April 27, 1990**
Date of publication: **May 10, 1990**

1989 Wisconsin Act 345

(Vetoed in Part)

AN ACT to repeal 16.75 (3s); to amend 16.75 (1) (a) 1 and (3m) (b), 84.01 (13), 84.06 (2) (a), 84.06 (4), 85.015 and 565.25 (2) (a) 2. (intro.); and to create 15.105 (22), 16.752 and 20.505 (4) (ka) of the statutes, relating to state procurements from work centers for the severely handicapped, creating a state use board, granting rule-making authority and making an appropriation.

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

SECTION 1. Legislative purpose. The purpose of this act is to further this state's existing policy to encourage and assist people with severe disabilities to achieve maximum personal independence through useful, productive and gainful employment by assuring an expanded and constant market for their products and services, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and the need for costly institutionalization.

SECTION 2. 15.105 (22) of the statutes is created to read:

15.105 (22) **STATE USE BOARD.** There is created a state use board which is attached to the department of administration under s. 15.03. The board shall consist

of 8 members appointed to serve for 4-year terms, including a representative of the department of administration; a representative of the central non-profit organization, as defined in s. 16.752 (1) (b); a representative of the subunit of the department of health and social services which administers mental health laws; a representative of the subunit of the department of health and social services which administers vocational rehabilitation laws; 2 representatives of private businesses, one of whom shall represent a small business; one representative of a work center, as defined in s. 16.752; and one member who does not represent any of the foregoing entities. A member vacates his or her office if the member loses the status upon which his or her appointment is based. In this subsection, "small business" means an independently owned and operated business which is not

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dominant in its field and which has had less than \$2,500,000 in gross annual sales for each of the 2 previous calendar years or has 25 or fewer employes.

SECTION 3. 16.75 (1) (a) 1 and (3m) (b) of the statutes are amended to read:

16.75 (1) (a) 1. All orders awarded or contracts made by the department for all materials, supplies, equipment and contractual services, except as otherwise provided in par. (c) and subs. (1m), (2), (2g), (2m), (3m), ~~(3e)~~, (3t), (6) and (7) and ss. 16.754, 46.265, 50.05 (7) (f) and 144.48 (7), shall be awarded to the lowest responsible bidder, taking into consideration life cycle cost estimates under sub. (1m), when appropriate, the location of the agency, the quantities of the articles to be supplied, their conformity with the specifications, and the purposes for which they are required and the date of delivery.

(3m) (b) The department and any agency making purchases under s. 16.74 shall attempt to ensure that 5% of the total amount expended under this subchapter in each fiscal year is paid to minority businesses. Except as provided under sub. (7), the department may purchase materials, supplies, equipment and contractual services from any minority business submitting a qualified responsible competitive bid that is no more than 5% higher than the apparent low bid or competitive proposal that is no more than 5% higher than the most advantageous offer, ~~unless the department is required under sub. (3s) to award the order or contract to a sheltered workshop.~~ In administering the preference for minority businesses established in this paragraph, the department and any agency making purchases under s. 16.74 shall maximize the use of minority businesses which are incorporated under ch. 180 or which have their principal place of business in this state.

SECTION 4. 16.75 (3s) of the statutes is repealed.

SECTION 5. 16.752 of the statutes is created to read:

16.752 Procurement from work centers for severely handicapped individuals. (1) DEFINITIONS. In this section:

(a) "Board" means the state use board.

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~~(b) "Central nonprofit organization" means a nonprofit corporation organized under the laws of this state and operated in the interest of the severely handicapped, and designated by the board to facilitate the distribution of orders of agencies for materials, supplies, equipment or contractual services among qualified rehabilitation facilities for the severely handicapped, and to assist the board in administering this section.~~

(c) "Direct labor" means all labor or work involved in producing or supplying materials, supplies or equipment or performing contractual services including preparation, processing and packing, but excluding supervision, administration, inspection and shipping.

(d) "Severely handicapped individual" means an individual who has a physical, mental or emotional disability, not including blindness but including a visual impairment, which is a substantial handicap to employment and prevents the individual from engaging in normal competitive employment.

(e) "Work center" means a charitable organization or nonprofit institution licensed under s. 104.07, incorporated in this state and operated for the purpose of carrying out a program of rehabilitation for severely handicapped individuals and for providing the individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature, and which is engaged in the production of materials, supplies or equipment or the performance of contractual services in connection with which not less than 75% of the total hours of direct labor are performed by severely handicapped individuals.

(2) DUTIES OF THE STATE USE BOARD. The board shall:

(a) Coordinate and monitor the implementation of this section.

(b) Aid in the identification of materials, supplies, equipment and contractual services to be procured by agencies from work centers.

(c) Establish eligibility criteria for work centers participating in the program established under this section.

(d) At least annually, establish and review fair market prices for materials, supplies, equipment and contractual services to be purchased from work centers.

(e) No later than October 1, prepare and submit to the secretary an annual report concerning its activities, including:

1. A summary of materials, supplies, equipment and contractual services purchased by ~~the~~ agencies **Vetoed in Part** from work centers.

2. The names of work centers participating in the program established under this section.

3. The impact of the program established under this section upon production, work stabilization and program development of, and the number of severely handicapped individuals served by, participating work centers.

(f) At least annually, conduct a review of the prices paid by ~~the~~ agencies for the materials, supplies, equipment and contractual services provided by work centers and make any adjustments necessary to establish fair market price. **Vetoed in Part**

(g) Promulgate rules regarding specifications, time of delivery and designation of materials, supplies, equipment and contractual services to be supplied by work centers. The board shall maintain a list of each material, supply, piece of equipment or contractual service to be supplied by work centers, and shall assign a number to each item on the list. Specifications of the board shall be consistent with specifications prescribed by agencies for which procurements are made.

(h) Review each order and contract for the impact that the requirements of sub. (7) have on each supplier or contractor, and assure that the requirements do not affect more than 15% of the supplier's or contractor's current yearly sales or production.

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in Part**

(i) Prescribe a percentage surcharge to be paid by each agency as a part of each order placed or contract made with a work center, which shall be payable by the work center to the department within a time and in accordance with a procedure specified by the board.

**Vetoed
in Part**

(3) DUTIES OF THE CENTRAL NONPROFIT ORGANIZATION. The central nonprofit organization shall:

(a) Represent work centers in their relations with the board under this section.

(b) Evaluate the qualifications and capabilities of work centers and provide the board with pertinent data concerning work centers, their status as qualified nonprofit organizations, their manufacturing or service capabilities, and other information required by the board.

(c) Recommend to the board, with appropriate justification, including recommended prices, suitable materials, supplies, equipment or contractual services for procurement from work centers.

(d) Distribute to work centers in accordance with guidelines established by the board orders issued by agencies relating to procurement.

(e) Maintain necessary records relating to work centers to enable the organization to allocate orders equitably among work centers.

(f) Supervise work centers to ensure compliance with specifications in production of materials, supplies or equipment or performance of services.

(g) As market conditions change, recommend price changes, with appropriate justification, for materials, supplies, equipment or services on the list maintained under sub. (2) (g).

(h) Monitor and inspect work centers to ensure compliance with this section and rules promulgated under this section.

(i) Enter into contracts with agencies for the furnishing of materials, supplies, equipment or services provided by work centers.

(j) No later than October 1, submit to the board a comprehensive annual report for the preceding state fiscal year concerning the operations of work centers, including significant accomplishments and developments, and such other matters as the organization considers appropriate or the board requests.

(4) ASSIGNMENTS TO WORK CENTERS. (a) The board shall assign to work centers the responsibility to supply specific materials, supplies, equipment or services.

(b) If a work center proposes to add specified materials, supplies, equipment or services to the list maintained by the board under sub. (2) (g), the board shall accord first preference to that work center in determining suppliers for those materials, supplies, equip-

ment or services under contracts entered into by the organization as provided in sub. (3) (i).

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(c) A work center proposing to place specific materials, supplies, equipment or services on the list maintained under sub. (2) (g) shall complete action to enable the work center to produce the materials, supplies or equipment or perform the services within 9 months after the board assigns to the work center the responsibility to supply the materials, supplies, equipment or services.

(d) If the work center has not completed action within the period provided under par. (c), the board may reassign the materials, supplies, equipment or services to another work center that is capable of producing the materials, supplies or equipment or performing the services if the work center is prepared to begin production of the materials, supplies or equipment or performance of the services within 30 days after the proposed date of the reassignment. The board shall grant priority for reassignments to any work centers which propose to produce the materials, supplies or equipment or to perform the services, in the order that proposals are made.

(5) DISTRIBUTION OF ORDERS. The central nonprofit organization shall distribute an order from an agency under sub. (3) (d) only to work centers which the board has approved to produce the specific materials, supplies or equipment or to perform the particular services required in the order. If the board has approved 2 or more work centers to produce specific materials, supplies or equipment, or to perform particular services, the central nonprofit organization shall distribute orders among those work centers in a fair and equitable manner.

(6) FEES. The central nonprofit organization may charge work centers for facilitating their participation in the program established under this section. The fees shall not exceed rates approved by the board.

(7) QUALIFICATION OF WORK CENTERS. To qualify for participation under the program established under this section, a work center shall submit to the board, through the central nonprofit organization, the following documents, transmitted by a letter signed by an officer of the organization:

**Vetoed
in Part**

(a) A legible copy of the articles of incorporation of the organization showing the date of filing and the seal of the secretary of state.

(b) A copy of the bylaws of the organization certified by an officer.

(c) A copy of a letter from the federal internal revenue service indicating that the organization qualifies as a tax-exempt organization.

(d) A copy of the license issued to the organization under s. 104.07.

(8) RESPONSIBILITIES OF WORK CENTERS. Each work center participating in the program established under this section shall:

Vetoed in Part (a) Furnish materials, supplies, equipment and services in strict accordance with its assignment issued under sub. (4) and orders issued by agencies.

(b) Make its records available for public inspection at any reasonable time.

(c) Maintain records of direct labor hours performed in the work center by each worker.

Vetoed in Part (d) Annually submit to the board, through the central nonprofit organization, a certification that it is qualified to participate in the program established under this section.

(e) Comply with applicable occupational health and safety standards prescribed by the U.S. secretary of labor or the federal occupational health and safety administration.

(f) Maintain an on-going placement program for severely handicapped individuals that includes staff which is assigned to perform personal evaluations and to maintain liaisons with appropriate community service organizations.

(g) Maintain a record for each severely handicapped individual employed by it which includes a written report prepared by a licensed physician or psychiatrist, or a qualified psychologist, reflecting the nature and extent of the disability that causes the individual to qualify as severely handicapped.

(9) PURCHASE OF RAW MATERIALS. Work centers shall seek broad competition in the purchase of raw materials and components used in the materials, supplies, equipment or services provided to agencies under this section. Work centers shall inform the board before entering into multiyear contracts for such raw materials and components.

(10) PRODUCTION OF SUCH MATERIALS, SUPPLIES AND EQUIPMENT. In the production of materials, supplies and equipment under this section, a work center shall make an appreciable contribution to the reforming of raw materials or the assembly of components thereof.

Vetoed in Part (11) VIOLATIONS. Any alleged violation of this section by a work center shall be investigated by the central nonprofit organization, which shall notify the concerned work center and afford it the opportunity to submit a statement of facts and evidence to the board. The board shall determine whether a violation has occurred. Pending a decision from the board, the board may direct the central nonprofit organization to temporarily suspend assignments to the work center under sub. (4). If the board determines that a violation has occurred, the board may terminate assignments to the work center or suspend assignments for such period as the board determines.

(12) PROCUREMENT REQUIREMENTS AND PROCEDURES. (a) Except as provided in pars. (c), (d) and (h) and as authorized under sub. (13), agencies shall obtain materials, supplies, equipment and services on the list maintained by the board under sub. (2) (g).

(b) Purchase orders shall contain the following:

1. The name, material, supply or equipment number assigned by the board, most recent specifica-

tion, quantity, unit price, and place and time of delivery.

2. The type of work and location of service required, most recent specification, work to be performed, estimated volume, and time for completion.

(c) Agencies shall issue purchase orders with sufficient time for the central nonprofit organization to reply for orders to be placed and for the appropriate work center to produce the materials, supplies or equipment or provide the services required. **Vetoed in Part**

(d) If any commodity on the list maintained under sub. (2) (g) is also produced at an institution of the state and the commodity conforms to the specifications on the list, the ordering agency shall purchase the commodity from the institution.

(e) If a specific material, supply or piece of equipment on the list maintained under sub. (2) (g) also appears on the list of materials, supplies and equipment supplied by the prison industries under s. 16.75 (3t) (c), the ordering agency shall notify and provide prison industries with the opportunity to fill the order prior to placing an order with the central nonprofit organization. **Vetoed in Part**

(f) The central nonprofit organization shall promptly acknowledge purchase orders. **Vetoed in Part**

(g) The central nonprofit organization shall make allocations to the appropriate work centers upon receipt of an order, allowing sufficient time for the purchase of materials, production or preparation, completion and delivery.

(h) Paragraph (a) does not apply to purchases of printing or stationery.

(13) CERTIFICATES OF EXCEPTION. (a) The central nonprofit organization shall grant written authorization to an ordering agency to procure materials, supplies, equipment or services on the list maintained under sub. (2) (g) from commercial sources when all of the following conditions are met: **Vetoed in Part**

1. The work center to which the order is assigned cannot furnish a material, supply, piece of equipment or service within the period specified in the order.

2. The material, supply, equipment or service is available from commercial sources in the quantities and at an earlier time than it is available from the work center to which the order is assigned.

(b) The central nonprofit organization may, and shall, issue an authorization to an ordering agency to procure materials, supplies, equipment or services from commercial sources when the quantity involved is not sufficient for the economical production or provision by the work center to which the order is assigned. **Vetoed in Part**

(c) The central nonprofit organization shall issue authorizations under pars. (a) and (b) promptly upon request of an ordering agency. The authorization shall be in the form of a certificate which shall specify the quantities and delivery period covered by the authorization. The organization shall transmit a copy of each certificate to the board. **Vetoed in Part**

(14) PRICES. (a) All prices included in the list maintained under sub. (2) (g) shall be determined by the board on the basis of fair market prices for materials, supplies, equipment or services similar to those supplied by work centers.

(b) Prices for materials, supplies or equipment shall include delivery and packaging, packing and marketing costs.

(c) Price changes for materials, supplies or equipment shall apply to all orders placed on or after the effective date of the change.

(d) Delivery of an order is accomplished when a shipment is received and accepted by the purchasing agency.

Vetoed in Part

(15) ADJUSTMENT AND CANCELLATION OF ORDERS. If the central nonprofit organization or a work center fails to comply with the terms of an order from an agency, the ordering agency shall make every effort to negotiate adjustments before canceling the order.

Vetoed in Part

(16) CORRESPONDENCE AND INQUIRIES. Correspondence or inquiries concerning deliveries of materials, supplies or equipment being shipped from work centers or performance of services by work centers shall be through the central nonprofit organization.

(17) QUALITY CONTROL. (a) Materials, supplies and equipment furnished by work centers under specifications issued by an agency shall be manufactured by work centers in strict accordance with the specifications.

(b) Services provided by work centers under specifications issued by an agency shall be performed by

work centers in strict accordance with the specifications. If no specifications exist, the services shall be performed by work centers in accordance with good commercial practices.

(c) If the quality of a material, supply, piece of equipment or service received from a work center is not satisfactory to the contracting agency, the agency shall address its complaint to the central nonprofit organization. If the complaint cannot be resolved by the work center and the central nonprofit organization, the organization shall advise the board and, if the board determines that the quality of the material, supply, equipment or service is unsatisfactory, the board shall suspend the eligibility of the work center which provided the material, supply or equipment or which performed the service to participate in the program established under this section.

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(18) SPECIFICATION CHANGES. (a) The board may change specifications contained in the list maintained under sub. (2) (g). Each list shall contain a basic specification and the date of the latest revision. Agencies shall notify the central nonprofit organization of the latest applicable specification for each material, supply, equipment or service before placing an order for that material, supply, equipment or service.

Vetoed in Part

(b) If an agency makes substantial changes in a specification on the list maintained under sub. (2) (g) the board shall assign a new item number. The agency shall notify the board and the central service organization of the changes prior to their effective date.

Vetoed in Part

SECTION 6. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

20.505 Administration, department of

(4) ATTACHED DIVISIONS, BOARDS AND COMMISSIONS

(ka) State use board--general program operations

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SECTION 7g. 20.505 (4) (ka) of the statutes is created to read:

20.505 (4) (ka) *State use board — general program operations.* The amounts in the schedule for general program operations of the state use board. All moneys received by the department from state agencies under s. 16.752 (2) (i) shall be credited to this appropriation.

SECTION 8. 84.01 (13) of the statutes is amended to read:

84.01 (13) ENGINEERING SERVICES. The department may engage such engineering, consulting, surveying or other specialized services as it deems advisable. Any engagement of services under this subsection is exempt from ss. 16.70 to 16.75, 16.755 to 16.82 and 16.85 to 16.89, but ss. 16.528, 16.752 and 16.754 apply to such engagement. Any engagement involving an

expenditure of \$3,000 or more shall be by formal contract approved by the governor.

SECTION 9. 84.06 (2) (a) of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

84.06 (2) (a) All such highway improvements shall be executed by contract based on bids unless the department finds that another method as provided in sub. (3) or (4) would be more feasible and advantageous. Bids shall be advertised for in the manner determined by the department. Except as provided in s. 84.075, the contract shall be awarded to the lowest competent and responsible bidder as determined by the department. If the bid of the lowest competent bidder is determined by the department to be in excess of the estimated reasonable value of the work or not in the public interest, all bids may be rejected. The department shall, so far as reasonable, follow uniform

methods of advertising for bids and may prescribe and require uniform forms of bids and contracts. Except as provided in par. (b), the secretary shall enter into the contract on behalf of the state. Every such contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.82, 16.87 and 16.89, but ss. 16.528, 16.752 and 16.754 apply to the contract. Any such contract involving an expenditure of \$1,000 or more shall not be valid until approved by the governor. The secretary may require the attorney general to examine any contract and any bond submitted in connection with the contract and report on its sufficiency of form and execution. The bond required by s. 779.14 (1m) (b) for any such contract involving an expenditure of less than \$1,000 is exempt from approval by the governor and shall be subject to approval by the secretary. This subsection also applies to contracts with private contractors based on bids for maintenance under s. 84.07.

SECTION 10. 84.06 (4) of the statutes is amended to read:

84.06 (4) SPECIAL CONTRACTS WITH RAILROADS AND UTILITIES. If an improvement undertaken by the department will cross or affect the property or facilities of a railroad or public utility company, the department may, upon finding that it is feasible and advantageous to the state, arrange to perform portions of the improvement work affecting such facilities or property or perform work of altering, rearranging or relocating such facilities by contract with the railroad or public utility. Such contract shall be between the railroad company or public utility and the state and need not be based on bids. The contract may be entered into on behalf of the state by the secretary. Every such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230, except ss. 16.528, 16.752 and 16.754. No such contract in which the total estimated debt to be incurred exceeds \$5,000 shall be valid until approved by the governor. As used in this subsection, "public utility" means the same as in s. 196.01 and "railroad" means the same as in s. 195.02. "Property" as used in this subsection includes

but is not limited to tracks, trestles, signals, grade crossings, rights-of-way, stations, pole lines, plants, substations and other facilities. Nothing in this subsection shall be construed to relieve any railroad or public utility from any financial obligation, expense, duty or responsibility otherwise provided by law relative to such property.

SECTION 11. 85.015 of the statutes is amended to read:

85.015 Transportation assistance contracts. All contracts entered into under this chapter to provide financial assistance in the areas of railroads, urban mass transit, specialized transportation, and harbors are subject to ~~ss.~~ ss. 16.528 and 16.752 but are exempt from ss. 16.70 to 16.75, 16.755 to 16.82 and 16.85 to 16.89.

SECTION 12. 565.25 (2) (a) 2. (intro.) of the statutes is amended to read:

565.25 (2) (a) 2. (intro.) Except as otherwise expressly provided, ss. 16.70 to 16.77 do not apply to major procurements made by the executive director under this paragraph. Sections 16.72 (2) (c) and (d), 16.75 (1), (1m), (2), (2m), (3), ~~(3s)~~, (3t), (6), (7) and (8), 16.752, 16.754 and 16.77 (2) apply to purchases by the executive director under this paragraph except as follows:

SECTION 13. **Nonstatutory provisions; initial terms.** Notwithstanding section 15.105 (22) of the statutes, as created by this act, of the members initially appointed to the state use board, as created by this act, the governor shall designate 4 to serve for terms expiring on May 1, 1993, and 4 to serve for terms expiring on May 1, 1995.

(2) POSITION AUTHORIZATIONS. The authorized FTE positions for the department of administration are increased by 2.0 PR positions to provide staff services to the state use board created by this act, to be funded from the appropriation under section 20.505 (4) (ka) of the statutes, as created by this act.