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 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...
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 employees.

SECTION 3. 16.75 (1) (a) 1 and (3) (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) (3t), (3), (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 the lowest responsible bid, or competitive proposal 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 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.

(b) “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.

(c) “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 rehabilitative 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 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.

(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.

(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.

(3) 

QUALIFICATION OF WORK CENTERS.

To qualify for participation under the program established under this section, a work center shall submit to the board, the following documents, transmitted by a letter signed by an officer of the organization:

(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:

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

- 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.

- 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 supply specific materials, supplies, equipment or services to the list maintained by the board under sub. (2) (a), the board shall accord first preference to that work center in electing suppliers for those materials, supplies, equip-
(a) Furnish materials, supplies, equipment and services in strict accordance with the terms and conditions of 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.

(d) Annually submit to the board, through the work center, 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 qualified to perform personal evaluations and 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, 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 reformation of raw materials or the assembly of components thereof.

(11) Violations. Any alleged violation of this section by a work center shall be investigated by the board. A written report shall be transmitted to the appropriate community organization and to the board. The board shall determine whether a violation has occurred. If the board determines that a violation has occurred, the organization shall inform the board of the work center to which the order is assigned.

(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 specification, 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.
3. Agencies shall issue purchase orders with sufficient time for the central nonprofit organization to issue an authorization to an ordering agency to procure materials, supplies, equipment or services or provide the services required.
4. 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.
5. 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 the prison industries with the opportunity to fill the order prior to placing an order with the central nonprofit organization.
6. Paragraph (a) does not apply to purchases of printing or stationery.

(13) Certificates of exception. (a) The central nonprofit organization shall promptly acknowledge purchase orders.

(b) The central nonprofit organization shall make allocations to the appropriate work center upon receipt of an order allowing sufficient time for the purchase of materials, supplies or service within the period specified in the order.

(c) Agencies 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.

(d) The central nonprofit organization 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.

(e) Agencies shall issue authorization under paras. (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.
(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.

(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.

(16) 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.

(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.

(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 good commercial practices.

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

<table>
<thead>
<tr>
<th></th>
<th>1989-90</th>
<th>1990-91</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>20.505</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>(4)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ATTACHED DIVISIONS, BOARDS AND COMMISSIONS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>(ka) State use board—general program operations</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

SEASON 7. 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 monies 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.

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 ss. 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. 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.