

2001 DRAFTING REQUEST

Bill

Received: 09/19/2000

Received By: kuesejt

Wanted: As time permits

Identical to LRB:

For: Carol Owens (608) 267-7990

By/Representing: Jacque Zibrowski

This file may be shown to any legislator: NO

Drafter: kuesejt

May Contact:

Alt. Drafters: shoveme
grantpr
fasttn

Subject: Employ Priv - miscellaneous
Munis - miscellaneous
State Government - miscellaneous
State Government - state bldg pr
Transportation - highways
Transportation - miscellaneous

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Prohibiton of all-union agreements on state and local projects; grant expenditures

Instructions:

Per 1999 LRB-0407.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kuesejt 10/17/2000 shoveme 10/25/2000 grantpr	gilfokm 12/21/2000		_____			Local

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 12/27/2000 _____

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 12/27/2000

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 02/01/2001

FE Sent For:

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FE Sent For:

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Bill Request Form

Legislative Reference Bureau
100 N. Hamilton Street
Legal Section 266-3561

*Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.
Use this form only for bill draft requests. Attach more pages if necessary.*

Date Sept. 13, 2000

Legislator, agency, or other person requesting this draft Rep. Carol Owens

Person submitting request (name and phone number) Rep. Owens 267-7990

Persons to contact for questions about this draft (names and phone numbers) Jacque Zibranski,
my Research Assistant

Describe the problem, including any helpful examples. How do you want to solve the problem?

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 1999 LRB-2345/1 or 1997 AB-67). Redraft of 1999 LRB-0407 (JTK/MES/PEN/PG)

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES NO

If yes: Anyone who asks? YES NO
 Any legislator? YES NO

Only the following persons _____

Do you consider this request urgent? YES NO If yes, please indicate why Would like
to receive by mid-October.

Should we give this request priority over any pending request of this legislator, agency, or person?
YES NO

PJH

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in
10/25

SOON
~~1999 BILL~~

LPS:
Proof all amended
stats. w/FOLIO

D-NOTE

(regenerate)

1 AN ACT ~~to renumber~~ 59.52 (29) (a) and 60.47 (1) (a): ~~to renumber and amend~~
2 61.55; ~~to amend~~ 13.48 (19), 16.854 (3), 16.854 (4), 59.52 (29) (b), 66.949 (3),
3 84.06 (2) (a), 86.31 (2) (b), 119.04 (1), 229.44 (4) (d) and 229.68 (4) (d); and ~~to~~
4 ~~create~~ 16.855 (14m), 20.931, 59.52 (29) (ae), 59.52 (29) (c) and (d), 60.47 (1) (ae),
5 60.47 (5m), 61.55 (title), 61.55 (1), 61.55 (3), 62.15 (1e), 62.15 (15), 66.20 (3s),
6 66.24 (5m), 66.88 (5s), 66.904 (6), 85.017, 118.265, 229.41 (8m), 229.46 (8),
7 229.65 (6m) and 229.682 (9) of the statutes; **relating to:** requirements
8 concerning participation by labor organizations in public construction
9 contracts and the expenditure of public grant moneys.

Analysis by the Legislative Reference Bureau

This bill requires the department of administration, or the secretary of transportation with respect to transportation-related projects, to ensure that the specifications for bids and contracts for state construction projects and construction projects of local professional baseball park districts do not:

1. Require any bidder, contractor or subcontractor to enter into or to adhere to an agreement with any labor organization concerning services to be performed in relation to the project or a related project.

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2. Discriminate against any bidder, contractor or subcontractor for refusing to enter into or continue to adhere to an agreement with any labor organization concerning services to be performed in relation to the project or a related project.

3. Require any bidder, contractor or subcontractor to enter into, continue to adhere to or enforce any agreement that requires its employees, as a condition of employment, to:

a. Become members of or become affiliated with a labor organization.

b. Make payments to a labor organization, without the authorization of the employees, exceeding the employees' proportionate share of the cost of collective bargaining, contract administration, and grievance adjustment.

The bill permits any taxpayer of this state or any other person who enters into contracts or subcontracts for building construction services or transportation-related construction services to bring a lawsuit to require compliance with these requirements. If that person prevails in his or her lawsuit, the bill provides that the court shall award to that person reasonable actual attorney fees in addition to other costs that are currently allowed to prevailing parties in lawsuits against nonstate entities. *must*

The bill also prohibits any state agency from conditioning the award of any state grant upon any agreement by the recipient:

1. To enter into or continue to adhere to an agreement with any labor organization concerning services to be funded under the grant.

2. To enter into, continue to adhere to or enforce any agreement that requires services that are funded under the grant to be performed by employees who must:

a. Become members of or become affiliated with a labor organization.

b. Make payments to a labor organization, without the authorization of the employees, exceeding the employees' proportionate share of the cost of collective bargaining, contract administration, and grievance adjustment.

The bill permits any taxpayer of this state or any other person who applies for a state grant to bring a lawsuit to require compliance with these requirements and provides that if that person prevails in his or her lawsuit, the court shall award to that person reasonable actual attorney fees in addition to other costs that are currently allowed to prevailing parties in lawsuits against nonstate entities. *must*

The bill also requires a school board, the governing body of a political subdivision of this state (a city, village, town or county), a metropolitan sewerage district, a local exposition district, ~~or~~ a local professional baseball park district, to ensure that the specifications for bids and contracts for public works projects conducted by the school board, political subdivision, metropolitan sewerage district, local exposition district, or local professional baseball park district including highway projects, do not:

1. Require any bidder, contractor or subcontractor to enter into or to adhere to an agreement with any labor organization concerning services to be performed in relation to the project or a related project.

2. Discriminate against any bidder, contractor or subcontractor for refusing to enter into or continue to adhere to an agreement with any labor organization concerning services to be performed in relation to the project or a related project.



or a local professional football stadium district

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3. Require any bidder, contractor, or subcontractor to enter into, continue to adhere to, or enforce any agreement that requires its employees, as a condition of employment, to:

- a. Become members of or become affiliated with a labor organization.
- b. Make payments to a labor organization, without the authorization of the employees, exceeding the employees' proportionate share of the cost of collective bargaining, contract administration, and grievance adjustment.

In addition, the bill permits any taxpayer of this state or any other person who enters into contracts or subcontracts for building construction services to bring a lawsuit to require compliance with these requirements. If that person prevails in his or her lawsuit, the bill provides that the court shall award to that person reasonable actual attorney fees in addition to other costs that are currently allowed to prevailing parties in lawsuits against nonstate entities. must

Under current law, state agencies have only the powers given to them by law or necessarily inferred therefrom. These powers do not include the authority to condition the award of state contracts or grants upon agreements with labor organizations, representation by labor organizations, or making of payments to labor organizations. With certain exceptions, state construction contracts are generally required to be awarded to the lowest responsible bidder. With certain exceptions, the contractor for a state building project is required to pay employees who perform work under the contract the prevailing wage for similar work in the area where the project is located. State grants are subject to the specific requirements of various laws under which the grants are made. Currently, state law prohibits any employer from entering into a contract with an employee or prospective employee concerning membership or nonmembership in a labor organization.

Currently, with certain exceptions, public works contracts with a political subdivision, metropolitan sewerage district, or local exposition district are generally required to be awarded to the lowest responsible bidder. With certain exceptions, persons who contract with a political subdivision, metropolitan sewerage district, local exposition district, or local professional baseball park district for public works projects are required to pay employees who perform work under such a contract the prevailing wage for similar work in the area where the project is located.

Under current law, towns and counties have only the powers given to them by law or necessarily inferred therefrom. These powers do not include the authority to condition the award of public works contracts upon agreements with labor organizations, representation by labor organizations, or making of payments to labor organizations. To the extent that the lowest responsible bidder requirements or other exceptions do not apply, cities and villages, under their current law home rule authority, could condition the award of public works contracts upon agreements with labor organizations.

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

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

1 **SECTION 1.** 13.48 (19) of the statutes is amended to read:

2 13.48 (19) ALTERNATIVES TO STATE CONSTRUCTION. Whenever the building
3 commission determines that the use of innovative types of design and construction
4 processes will make better use of the resources and technology available in the
5 building industry, the building commission may waive any ~~or all~~ provision of s.
6 16.855 [✓] except s. 16.855 (14m) [✓] if such action is in the best interest of the state and if
7 the waiver is accomplished through formal action of the building commission. The
8 building commission may authorize the lease, lease purchase or acquisition of such
9 facilities constructed in the manner authorized by the building commission. The
10 building commission may also authorize the lease, lease purchase or acquisition of
11 existing facilities in lieu of state construction of any project enumerated in the
12 authorized state building program.

13 **SECTION 2.** 16.854 (3) of the statutes is amended to read:

14 16.854 (3) It shall be a goal of the department, with regard to each of the
15 contracts described under sub. (2) (a), (b) [✓] and (c), to award at least 25% of the dollar
16 value of such contracts to minority businesses and at least 5% of the dollar value of
17 such contracts to women's businesses.

18 (4) Sections 16.85, 16.855 (1) to (14) and (15) to ~~(22)~~ ⁽²²⁾ and 16.87 do not apply to
19 services provided or contracted by the department under this section.

20 **SECTION 3.** 16.854 (4) of the statutes, as affected by 1999 Wisconsin Act (this
21 act), is amended to read:

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1 ~~16.854 (4) Sections 16.85, 16.855 (1) to (14) and (15) to (23) (22) and 16.87 do~~
2 ~~not apply to services provided or contracted by the department under this section.~~

3 **SECTION 4.** 16.855 (14m) of the statutes is created to read:

4 16.855 (14m) (a) In this subsection, "labor organization" has the meaning given
5 in s. 5.02 (8m). ✓

6 (b) The department shall ensure that the specifications for bids and contracts
7 for construction projects entered into under this section do not do any of the
8 following:

9 1. Require any bidder, contractor[✓] or subcontractor to enter into or to adhere to
10 an agreement with any labor organization concerning services to be performed in
11 relation to the project or a related project.

12 2. Discriminate against any bidder, contractor[✓] or subcontractor for refusing to
13 enter into or continue to adhere to an agreement with any labor organization
14 concerning services to be performed in relation to the project or a related project.

15 3. Require any bidder, contractor[✓] or subcontractor to enter into, continue to
16 adhere to[✓] or enforce any agreement that requires its employe^es, as a condition of
17 employment, to do any of the following:

18 a. Become members of or become affiliated with a labor organization.

19 b. Make payments to a labor organization, without the authorization of the
20 employe^es, exceeding the employe^es' proportionate share of the cost of collective
21 bargaining, contract administration[✓] and grievance adjustment.

22 (c) Any taxpayer of this state or any other person who enters into contracts or
23 subcontracts for building construction services may bring an action to require
24 compliance with this subsection. If that person prevails in his or her action, the court

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1 shall award to that person reasonable actual attorney fees in addition to other costs
2 allowed to prevailing parties under ch. 814.

3 **SECTION 5.** 20.931 of the statutes is created to read:

4 **20.931 Conditions upon state grants prohibited.** (1) In this section,
5 “labor organization” has the meaning given in s. 5.02 (8m). ✓

6 (2) No state agency may condition the award of any grant made by the agency
7 from moneys appropriated under this chapter upon any agreement by the recipient
8 to do any of the following:

9 (a) Enter into or continue to adhere to an agreement with any labor
10 organization concerning services to be funded under the grant.

11 (b) Enter into, continue to adhere to ✓ or enforce any agreement that requires
12 services that are funded under the grant to be performed by employe^es who must do
13 any of the following:

14 1. Become members of or become affiliated with a labor organization.

15 2. Make payments to a labor organization, without the authorization of the
16 employe^es, exceeding the employe^es' proportionate share of the cost of collective
17 bargaining, contract administration, ✓ and grievance adjustment.

18 (3) Any taxpayer of this state or any other person who applies for a grant to be
19 made from moneys appropriated under this chapter may bring an action to require
20 compliance with this section. If that person prevails in his or her action, the court
21 shall award to that person reasonable actual attorney fees in addition to other costs
22 allowed to prevailing parties under ch. 814.

23 **SECTION 6.** 59.52 (29) (a) of the statutes is renumbered 59.52 (29) (am). ✓

24 **SECTION 7.** 59.52 (29) (ae) of the statutes is created to read:

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1 59.52 (29) (ae) In this subsection, "labor organization" has the meaning given
2 in s. 5.02 (8m).[✓]

3 **SECTION 8.** 59.52 (29) (b) of the statutes is amended to read:

4 59.52 (29) (b) The provisions of par. ~~(a)~~ ^(am) are not mandatory for the repair
5 or reconstruction of public facilities when damage or threatened damage thereto
6 creates an emergency, as determined by resolution of the board, in which the public
7 health or welfare of the county is endangered. Whenever the board by majority vote
8 at a regular or special meeting determines that an emergency no longer exists, this
9 paragraph no longer applies.

10 **SECTION 9.** 59.52 (29) (c) and (d) of the statutes are created to read:

11 59.52 (29) (c) The board shall ensure that the specifications for bids and
12 contracts for construction projects entered into under this subsection do not do any
13 of the following:

14 1. Require any bidder, contractor,[✓] or subcontractor to enter into or to adhere to
15 an agreement with any labor organization concerning services to be performed in
16 relation to the project or a related project.

17 2. Discriminate against any bidder, contractor,[✓] or subcontractor for refusing to
18 enter into or continue to adhere to an agreement with any labor organization
19 concerning services to be performed in relation to the project or a related project.

20 3. Require any bidder, contractor,[✓] or subcontractor to enter into, continue to
21 adhere to,[✓] or enforce any agreement that requires its employe^es, as a condition of
22 employment, to do any of the following:

23 a. Become members of or become affiliated with a labor organization.

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1 b. Make payments to a labor organization, without the authorization of the
2 employes^e, exceeding the employes^e' proportionate share of the cost of collective
3 bargaining, contract administration^v and grievance adjustment.

4 (d) Any taxpayer of this state or any other person who enters into contracts or
5 subcontracts for building construction services may bring an action to require
6 compliance with par. (c). If that person prevails in his or her action, the court shall
7 award to that person reasonable actual attorney fees in addition to other costs
8 allowed to prevailing parties under ch. 814.

9 SECTION 10. 60.47 (1) (a)^v of the statutes is renumbered 60.47 (1) (am)^v.

10 SECTION 11. 60.47 (1) (ae) of the statutes is created to read:

11 60.47 (1) (ae) "Labor organization" has the meaning given in s. 5.02 (8m)^v.

12 SECTION 12. 60.47 (5m) of the statutes is created to read:

13 60.47 (5m) CONTRACTS WITH LABOR ORGANIZATIONS. (a) The town board shall
14 ensure that the specifications for bids and contracts for construction projects entered
15 into under this section do not do any of the following:

16 1. Require any bidder, contractor^v or subcontractor to enter into or to adhere to
17 an agreement with any labor organization concerning services to be performed in
18 relation to the project or a related project.

19 2. Discriminate against any bidder, contractor^v or subcontractor for refusing to
20 enter into or continue to adhere to an agreement with any labor organization
21 concerning services to be performed in relation to the project or a related project.

22 3. Require any bidder, contractor^v or subcontractor to enter into, continue to
23 adhere to^v or enforce any agreement that requires its employes^e, as a condition of
24 employment, to do any of the following:

25 a. Become members of or become affiliated with a labor organization.

BILL

1 b. Make payments to a labor organization, without the authorization of the
2 employ^es, exceeding the employ^es' proportionate share of the cost of collective
3 bargaining, contract administration, and grievance adjustment.

4 (b) Any taxpayer of this state or any other person who enters into contracts or
5 subcontracts for building construction services may bring an action to require
6 compliance with par. (a). If that person prevails in his or her action, the court shall
7 award to that person reasonable actual attorney fees in addition to other costs
8 allowed to prevailing parties under ch. 814.

9 **SECTION 13.** 61.55 (title) of the statutes is created to read:

10 **61.55 (title) Public contracts and competitive bidding.**

11 **SECTION 14.** 61.55 of the statutes is renumbered 61.55 (2) and amended to read:

12 **61.55 (2) CONTRACTS INVOLVING OVER \$^{15,000}~~10,000~~; HOW LET; EXCEPTION.** All contracts
13 for public construction, in any such village, exceeding \$10,000, shall be let by the
14 village board to the lowest responsible bidder in accordance with s. 66.29 insofar as
15 said that section may be applicable. If the estimated cost of any public construction
16 exceeds \$5,000, but is not greater than \$10,000, the village board shall give a class
17 1 notice, under ch. 985, of the proposed construction before the contract for the
18 construction is executed. This provision and s. 281.41 are not mandatory for the
19 repair and reconstruction of public facilities when damage or threatened damage
20 thereto creates an emergency, as determined by resolution of the village board, in
21 which the public health or welfare of the village is endangered. Whenever the village
22 board by majority vote at a regular or special meeting declares that an emergency
23 no longer exists, this exemption no longer applies.

24 **SECTION 15.** 61.55 (1) of the statutes is created to read:

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1 61.55 (1) DEFINITION. In this section "labor organization" has the meaning
2 given in s. 5.02 (8m).

3 **SECTION 16.** 61.55 (3) of the statutes is created to read:

4 61.55 (3) CONTRACTS WITH LABOR ORGANIZATIONS. (a) The village board shall
5 ensure that the specifications for bids and contracts for construction projects entered
6 into under this section do not do any of the following:

7 1. Require any bidder, contractor[✓] or subcontractor to enter into or to adhere to
8 an agreement with any labor organization concerning services to be performed in
9 relation to the project or a related project.

10 2. Discriminate against any bidder, contractor[✓] or subcontractor for refusing to
11 enter into or continue to adhere to an agreement with any labor organization
12 concerning services to be performed in relation to the project or a related project.

13 3. Require any bidder, contractor[✓] or subcontractor to enter into, continue to
14 adhere to[✓] or enforce any agreement that requires its employe^es, as a condition of
15 employment, to do any of the following:

16 a. Become members of or become affiliated with a labor organization.

17 b. Make payments to a labor organization, without the authorization of the
18 employe^es, exceeding the employe^es' proportionate share of the cost of collective
19 bargaining, contract administration[✓] and grievance adjustment.

20 (b) Any taxpayer of this state or any other person who enters into contracts or
21 subcontracts for building construction services may bring an action to require
22 compliance with par. (a). If that person prevails in his or her action, the court shall
23 award to that person reasonable actual attorney fees in addition to other costs
24 allowed to prevailing parties under ch. 814.

25 **SECTION 17.** 62.15 (1e) of the statutes is created to read:

BILL

1 62.15 (1e) DEFINITION. In this section "labor organization" has the meaning
 2 given in s. 5.02 (8m).

3 **SECTION 18.** 62.15 (15) of the statutes is created to read:

4 62.15 (15) CONTRACTS WITH LABOR ORGANIZATIONS. (a) The common council shall
 5 ensure that the specifications for bids and contracts for construction projects entered
 6 into under this section do not do any of the following:

7 1. Require any bidder, contractor^v or subcontractor to enter into or to adhere to
 8 an agreement with any labor organization concerning services to be performed in
 9 relation to the project or a related project.

10 2. Discriminate against any bidder, contractor^v or subcontractor for refusing to
 11 enter into or continue to adhere to an agreement with any labor organization
 12 concerning services to be performed in relation to the project or a related project.

13 3. Require any bidder, contractor^v or subcontractor to enter into, continue to
 14 adhere to^v or enforce any agreement that requires its employe^es, as a condition of
 15 employment, to do any of the following:

16 a. Become members of or become affiliated with a labor organization.

17 b. Make payments to a labor organization, without the authorization of the
 18 employe^es, exceeding the employe^es' proportionate share of the cost of collective
 19 bargaining, contract administration^v and grievance adjustment.

20 (b) Any taxpayer of this state or any other person who enters into contracts or
 21 subcontracts for building construction services may bring an action to require
 22 compliance with par. (a). If that person prevails in his or her action, the court shall
 23 award to that person reasonable actual attorney fees in addition to other costs
 24 allowed to prevailing parties under ch. 814.

25 **SECTION 19.** ^{200.01}~~66.20~~ (3s) of the statutes is created to read:

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200.01
~~66-20~~(3s) "Labor organization" has the meaning given in s. 5.02 (8m).

200.11
 SECTION 20. ~~66-24~~(5m) of the statutes is created to read:

200.11
~~66-24~~(5m) CONTRACTS WITH LABOR ORGANIZATIONS. (a) The commission shall ensure that the specifications for bids and contracts for construction projects entered into under sub. (5) do not do any of the following:

1. Require any bidder, contractor[✓] or subcontractor to enter into or to adhere to an agreement with any labor organization concerning services to be performed in relation to the project or a related project.

2. Discriminate against any bidder, contractor[✓] or subcontractor for refusing to enter into or continue to adhere to an agreement with any labor organization concerning services to be performed in relation to the project or a related project.

3. Require any bidder, contractor[✓] or subcontractor to enter into, continue to adhere to[✓] or enforce any agreement that requires its employe^es, as a condition of employment, to do any of the following:

a. Become members of or become affiliated with a labor organization.

b. Make payments to a labor organization, without the authorization of the employe^es, exceeding the employe^es' proportionate share of the cost of collective bargaining, contract administration[✓] and grievance adjustment.

(b) Any taxpayer of this state or any other person who enters into contracts or subcontracts for building construction services may bring an action to require compliance with par. (a). If that person prevails in his or her action, the court shall award to that person reasonable actual attorney fees in addition to other costs allowed to prevailing parties under ch. 814.

200.21
 SECTION 21. ~~66-88~~(5s) of the statutes is created to read:

200.21
~~66-88~~(5s) "Labor organization" has the meaning given in s. 5.02 (8m).

BILL

1
2

^{200.47}
~~66.904~~ (6) of the statutes is created to read:

^{200.47}
~~66.904~~ (6) CONTRACTS WITH LABOR ORGANIZATIONS. (a) The commission shall ensure that the specifications for bids and contracts for construction projects entered into under this section do not do any of the following:

1. Require any bidder, contractor[✓] or subcontractor to enter into or to adhere to an agreement with any labor organization concerning services to be performed in relation to the project or a related project.

2. Discriminate against any bidder, contractor[✓] or subcontractor for refusing to enter into or continue to adhere to an agreement with any labor organization concerning services to be performed in relation to the project or a related project.

3. Require any bidder, contractor[✓] or subcontractor to enter into, continue to adhere to[✓] or enforce any agreement that requires its employe^es, as a condition of employment, to do any of the following:

a. Become members of or become affiliated with a labor organization.

b. Make payments to a labor organization, without the authorization of the employe^es, exceeding the employe^es' proportionate share of the cost of collective bargaining, contract administration[✓] and grievance adjustment.

(b) Any taxpayer of this state or any other person who enters into contracts or subcontracts for building construction services may bring an action to require compliance with par. (a). If that person prevails in his or her action, the court shall award to that person reasonable actual attorney fees in addition to other costs allowed to prevailing parties under ch. 814.

^{66.0133}
~~66.919~~ (3) of the statutes is amended to read:

^{66.0133}
~~66.919~~ (3) NOTICE. Notwithstanding ss. 27.065 (5) (a), 30.32, 38.18, 43.17 (9) (a), 59.52 (29) (a) [✓] ~~(am)~~, 59.70 (11), 60.47 (2) to (4), 60.77 (6) (a), 61.55, 61.56, 61.57,

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BILL

66.0923(10), 66.0925(10), 66.0927(11),
66.1333(5)(a) 2, 200.11(5)(d) 2, and
200.47(2)

66.0131

66.1333

1 62.15 (1), 62.155, ~~66.24(15)(d), 66.299(2), 66.491(5)(a) 2, 66.47(11), 66.505(10),~~

2 ~~66.508(10) and 66.904(2)~~ before entering into a performance contract under this
3 section, a local governmental unit shall solicit bids or competitive sealed proposals
4 from qualified providers. A local governmental unit may only enter into a
5 performance contract if the contract is awarded by the governing body of the local
6 governmental unit. The governing body shall give at least 10 days' notice of the
7 meeting at which the body intends to award a performance contract. The notice shall
8 include a statement of the intent of the governing body to award the performance
9 contract, the names of all potential parties to the proposed performance contract, and
10 a description of the energy conservation and facility improvement measures
11 included in the performance contract. At the meeting, the governing body shall
12 review and evaluate the bids or proposals submitted by all qualified providers and
13 may ~~may~~ award the performance contract to the qualified provider that best
14 meets the needs of the local governmental unit, which need not be the lowest cost
15 provider.

SECTION 24. 84.06 (2) (a) of the statutes is amended to read:

17 84.06 (2) (a) All such highway improvements shall be executed by contract
18 based on bids unless the department finds that another method as provided in sub.
19 (3) or (4) would be more feasible and advantageous. Bids shall be advertised for in
20 the manner determined by the department. Except as provided in s. 84.075, the
21 contract shall be awarded to the lowest competent and responsible bidder as
22 determined by the department. If the bid of the lowest competent bidder is
23 determined by the department to be in excess of the estimated reasonable value of
24 the work or not in the public interest, all bids may be rejected. The department shall,
25 so far as reasonable, follow uniform methods of advertising for bids and may

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1 prescribe and require uniform forms of bids and contracts. Except as provided in par.
2 (b), the secretary shall enter into the contract on behalf of the state. Every such
3 contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.82, 16.8^y and 16.89, but
4 ss. 16.528, 16.75² and 16.754 apply to the contract. Contracts under this section are
5 subject to s. 85.017. Any such contract involving an expenditure of \$1,000 or more
6 shall not be valid until approved by the governor. The secretary may require the
7 attorney general to examine any contract and any bond submitted in connection with
8 the contract and report on its sufficiency of form and execution. The bond required
9 by s. 779.14 (1m) is exempt from approval by the governor and shall be subject to
10 approval by the secretary. This subsection also applies to contracts with private
11 contractors based on bids for maintenance under s. 84.07.

12 **SECTION 25.** 85.017 of the statutes is created to read:

13 **85.017 Contracts conditioned on use of labor organizations**
14 **prohibited.** (1) In this section, "labor organization" has the meaning given in s.
15 5.02 (8m).

16 (2) The secretary shall ensure that the specifications for bids ^{and} contracts for
17 construction or maintenance projects entered into by the secretary or the
18 department do not do any of the following:

19 (a) Require any bidder, contractor, ^v or subcontractor to enter into or to adhere
20 to an agreement with any labor organization concerning services to be performed in
21 relation to the project or a related project.

22 (b) Discriminate against any bidder, contractor, ^v or subcontractor for refusing
23 to enter into or continue to adhere to an agreement with any labor organization
24 concerning services to be performed in relation to the project or a related project.

BILL

1 (c) Require any bidder, contractor,[✓] or subcontractor to enter into, continue to
2 adhere to,[✓] or enforce any agreement that requires its employe^es, as a condition of
3 employment, to do any of the following:

- 4 1. Become members of or become affiliated with a labor organization.
- 5 2. Make payments to a labor organization, without the authorization of the
- 6 employe^es, exceeding the employe^es' proportionate share of the cost of collective
- 7 bargaining, contract administration,[✓] and grievance adjustment.

8 (3) Any taxpayer of this state or any other person who enters into contracts or
9 subcontracts for construction services subject to sub. (2) may bring an action against
10 the secretary to require compliance with this section. If that person prevails in his
11 or her action, the court shall award to that person reasonable actual attorney fees
12 in addition to other costs allowed to prevailing parties under ch. 814.

13 **SECTION 26.** 86.31 (2) (b) of the statutes is amended to read:

14 86.31 (2) (b) Except as provided in par. (d), improvements for highway
15 construction projects funded under the program shall be under contracts. Such The
16 contracts are subject to ss. 59.52 (29) (c), 60.47 (5m), 61.55 (3), and 62.15 (15). The
17 contracts shall be awarded on the basis of competitive bids and shall be awarded to
18 the lowest responsible bidder. If a city, ~~village or town~~^{or village} does not receive a responsible
19 bid for an improvement, the city, ~~village or town~~^{or village} may contract with a county for the
20 improvement. A town may contract with a county for the improvement subject to
21 the criteria and procedures promulgated as rules under sub. (6) (h).

21 **SECTION 27.** 118.265 of the statutes is created to read:

22 **118.265 Contracts with labor organizations.** (1) In this section, "labor
23 organization" has the meaning given in s. 5.02 (8m).

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BILL

1 (2) The school board shall ensure that the specifications for bids and contracts
2 for construction projects entered into by the school board do not do any of the
3 following:

4 (a) Require any bidder, contractor or subcontractor to enter into or to adhere
5 to an agreement with any labor organization concerning services to be performed in
6 relation to the project or a related project.

7 (b) Discriminate against any bidder, contractor or subcontractor for refusing
8 to enter into or continue to adhere to an agreement with any labor organization
9 concerning services to be performed in relation to the project or a related project.

10 (c) Require any bidder, contractor or subcontractor to enter into, continue to
11 adhere to, or enforce any agreement that requires its employ^es, as a condition of
12 employment, to do any of the following:

- 13 1. Become members of or become affiliated with a labor organization.
- 14 2. Make payments to a labor organization, without the authorization of the
- 15 employ^es, exceeding the employ^es' proportionate share of the cost of collective
- 16 bargaining, contract administration and grievance adjustment.

17 (3) Any taxpayer of this state or any other person who enters into contracts or
18 subcontracts for building construction services may bring an action to require
19 compliance with sub. (2). If that person prevails in his or her action, the court shall
20 award to that person reasonable actual attorney fees in addition to other costs
21 allowed to prevailing parties under ch. 814.

✓
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17-22

22 ~~SECTION 28. 119.04 (1) of the statutes is amended to read:~~

23 119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.03 (3) (c),

24 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343, 115.345, 115.361, 115.38

25 (2), 115.45, 118.001 to 118.04, 118.06, 118.07, 118.10, 118.12, 118.125 to 118.14,

BILL

1 ~~118.145 (4), 118.15, 118.153, 118.16, 118.162, 118.163, 118.164, 118.18, 118.19,~~
2 ~~118.20, 118.24 (1), (2) (c) to (f), (6) and (8), 118.245, 118.255, 118.258, 118.265, 118.30~~
3 ~~to 118.43, 118.51, 118.52, 118.55, 120.12 (5) and (15) to (25), 120.125, 120.13 (1), (2)~~
4 ~~(b) to (g), (3), (14), (17) to (19), (26), (34) and (35) and 120.14 are applicable to a 1st~~
5 ~~class city school district and board.~~

6 **SECTION 29.** 229.41 (8m) of the statutes is created to read:

7 229.41 (8m) “Labor organization” has the meaning given in s. 5.02 (8m).

8 **SECTION 30.** 229.44 (4) (d) of the statutes is amended to read:

9 229.44 (4) (d) Enter into contracts. All contracts, the estimated costs of which
10 exceed \$30,000, are subject to s. 229.46 (8), except contracts subject to s. 229.46 (5)
11 and contracts for personal or professional services. The contracts shall be subject
12 to bid and shall be awarded to the lowest qualified and competent bidder. The district
13 may reject any bid that is submitted under this paragraph.

14 **SECTION 31.** 229.46 (8) of the statutes is created to read:

15 229.46 (8) (a) The district shall ensure that the specifications for bids and
16 contracts for construction projects entered into under this subchapter do not do any
17 of the following:

18 1. Require any bidder, contractor, or subcontractor to enter into or to adhere to
19 an agreement with any labor organization concerning services to be performed in
20 relation to the project or a related project.

21 2. Discriminate against any bidder, contractor, or subcontractor for refusing to
22 enter into or continue to adhere to an agreement with any labor organization
23 concerning services to be performed in relation to the project or a related project.

BILL

1 3. Require any bidder, contractor[✓], or subcontractor to enter into, continue to
2 adhere to[✓], or enforce any agreement that requires its employes^e, as a condition of
3 employment, to do any of the following:

4 a. Become members of or become affiliated with a labor organization.

5 b. Make payments to a labor organization, without the authorization of the
6 employes^e, exceeding the employes^e' proportionate share of the cost of collective
7 bargaining, contract administration[✓], and grievance adjustment.

8 (b) Any taxpayer of this state or any other person who enters into contracts or
9 subcontracts for building construction services may bring an action to require
10 compliance with ~~par~~ (a). If that person prevails in his or her action, the court shall
11 award to that person reasonable actual attorney fees in addition to other costs
12 allowed to prevailing parties under ch. 814.

13 **SECTION 32.** 229.65 (6m) of the statutes is created to read:

14 229.65 (6m) "Labor organization" has the meaning given in s. 5.02 (8m).

15 **SECTION 33.** 229.68 (4) (d) of the statutes is amended to read:

16 229.68 (4) (d) Enter into contracts, subject to s. 229.682 (9) and to such
17 standards as may be established by the district board. The district board may award
18 any such contract for any combination or division of work it designates and, subject
19 to s. 229.682 (9), may consider any factors in awarding a contract, including price,
20 time for completion of work and qualifications and past performance of a contractor.

21 **SECTION 34.** 229.682 (9) of the statutes is created to read:

22 229.682 (9) CONTRACTS WITH LABOR ORGANIZATIONS. (a) The district shall ensure
23 that the specifications for bids and contracts for construction projects entered into
24 under this subchapter do not do any of the following:

BILL

SECTION 34

1 1. Require any bidder, contractor[✓] or subcontractor to enter into or to adhere to
2 an agreement with any labor organization concerning services to be performed in
3 relation to the project or a related project.

4 2. Discriminate against any bidder, contractor[✓] or subcontractor for refusing to
5 enter into or continue to adhere to an agreement with any labor organization
6 concerning services to be performed in relation to the project or a related project.

7 3. Require any bidder, contractor[✓] or subcontractor to enter into, continue to
8 adhere to[✓] or enforce any agreement that requires its employe^es, as a condition of
9 employment, to do any of the following:

10 a. Become members of or become affiliated with a labor organization.

11 b. Make payments to a labor organization, without the authorization of the
12 employe^es, exceeding the employe^es' proportionate share of the cost of collective
13 bargaining, contract administration[✓] and grievance adjustment.

14 (b) Any taxpayer of this state or any other person who enters into contracts or
15 subcontracts for building construction services may bring an action to require
16 compliance with par. (a). If that person prevails in his or her action, the court shall
17 award to that person reasonable actual attorney fees in addition to other costs
18 allowed to prevailing parties under ch. 814.

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SECTION 35. Initial applicability.

20 (1) The treatment of sections 16.855 (14m), 20.931, 61.55 (title), (1)[✓] and (3),
21 62.15 (1e)[✓] and (15), ~~66.20(3s)~~^{200.01}, ~~66.24(5m)~~^{200.1}, ~~66.88(5s)~~^{200.21}, ~~66.99(6)~~^{200.47}, 84.06 (2) (a), 85.017,
22 86.31 (2) (b), 118.265, 229.41 (8m)[✓], 229.44 (4)[✓](d), 229.46 (8)[✓], 229.65 (6m)[✓], 229.68 (4)[✓]
23 (d), ~~and 229.682 (9)~~^{229.821(8m)} of the statutes and the renumbering and amendment of section
24 61.55 of the statutes first apply to grants that are made and bids and contracts that

BILL

1 are let, entered into, extended, modified^v or renewed on the effective date of this
2 subsection.

3 ~~SECTION 36. Effective dates. This act takes effect on the day after publication,~~
4 except as follows:

5 (1) ~~The treatment of section 16.854 (4) (SECTION 3) of the statutes takes effect~~
6 on July 1, 1999.

7 (END)

D-note

JWS 9-12 ✓

Section #. 61.55 of the statutes is amended to read:

61.55 Contracts involving over \$15,000; how let; exception. All contracts for public construction, in any such village, exceeding \$15,000, shall be let by the village board to the lowest responsible bidder in accordance with s. 66.0901 insofar as ~~said~~ ^{that} section may be applicable. If the estimated cost of any public construction exceeds \$5,000, but is not greater than \$15,000, the village board shall give a class 1 notice, under ch. 985, of the proposed construction before the contract for the construction is executed. This [✓]provision does not apply to public construction if the materials for such a project are donated or if the labor for such a project is provided by volunteers, and this provision and s. 281.41 are not mandatory for the repair and reconstruction of public facilities when damage or threatened damage thereto creates an emergency, as determined by resolution of the village board, in which the public health or welfare of the village is endangered. Whenever the village board by majority vote at a regular or special meeting declares that an emergency no longer exists, this exemption no longer applies.

~~History: 1975 c. 244; 1985 a. 183; 1995 a. 227; 1999 a. 9; 1999 a. 150 s. 672.~~

JWS 17-22

Section #. 119.04 (1) of the statutes is amended to read:

119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.0235 (3) (c), 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343, 115.345, 115.361, 115.38 (2), 115.45, 118.001 to 118.04, 118.045, 118.06, 118.07, 118.10, 118.12, 118.125 to 118.14, 118.145 (4), 118.15, 118.153, 118.16, 118.162, 118.163, 118.164, 118.18, 118.19, 118.20, 118.24 (1), (2) (c) to (f), (6) and (8), 118.245, 118.255, 118.258, ^{118.265,} 118.291, 118.30 to 118.43, 118.51, 118.52, 118.55, 120.12 (5) and (15) to (26), 120.125, 120.13 (1), (2) (b) to (g), (3), (14), (17) to (19), (26), (34), (35) and (37), 120.14 and 120.25 are applicable to a 1st class city school district and board.

~~History: 1971 c. 152 s. 38; 1974 c. 154 s. 80; 1973 c. 89 s. 20 (1); 1973 c. 90; 1973 c. 188 s. 6; 1973 c. 243, 254, 290, 307, 333; 1975 c. 39, 41, 95, 220, 379, 395, 422; 1977 c. 29; 1977 c. 203 s. 106; 1977 c. 206, 284, 447; 1979 c. 20; 1979 c. 34 s. 2102 (43) (a); 1979 c. 221, 298, 331; 1979 c. 346 s. 15; 1979 c. 355; 1981 c. 59; 1981 c. 241 s. 4; 1983 a. 193; 1983 a. 339 s. 10; 1983 a. 374 s. 12; 1983 a. 412, 489, 538; 1985 a. 29 s. 3202 (43); 1985 a. 56 s. 43; 1985 a. 214 s. 4; 1985 a. 225, 332; 1987 a. 27, 187, 285, 386, 403; 1989 a. 31, 120, 121, 122, 201, 209, 359; 1991 a. 39, 42, 189, 269; 1993 a. 16, 334, 377, 491; 1995 a. 27, 225; 1997 a. 27, 77, 113, 240, 252, 335; 1999 a. 9, 32, 73; 1999 a. 150 ss. 631, 672; 1999 a. 186.~~

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0400/?insMES
.....

p. 1 of 2
Insert 20-18

SECTION 1. 229.821 (8m) of the statutes is created to read:

229.821 (8m) "Labor organization" has the meaning given in s. 5.02 (8m). ↓

SECTION 2. 229.824 (4) (d) of the statutes is amended to read:

229.824 (4) (d) Enter into contracts, subject to s. 229.827 (4) ✓ and to such standards as may be established by the district board. The district board may award any such contract for any combination or division of work it designates and, subject to s. 229.827 (4), ✓ may consider any factors in awarding a contract, including price, time for completion of work and qualifications and past performance of a contractor.

History: 1999 a. 167.

SECTION 3. 229.827 (4) of the statutes is created to read:

229.827 (4) ~~229.827 (4)~~

~~No 229.827 (4)~~ (a) The district shall ensure that the specifications for bids and contracts for construction projects entered into under this subchapter do not do any of the following:

1. Require any bidder, contractor, ✓ or subcontractor to enter into or to adhere to an agreement with any labor organization concerning services to be performed in relation to the project or a related project.

2. Discriminate against any bidder, contractor, ✓ or subcontractor for refusing to enter into or continue to adhere to an agreement with any labor organization concerning services to be performed in relation to the project or a related project.

3. Require any bidder, contractor, ✓ or subcontractor to enter into, continue to adhere to, ✓ or enforce any agreement that requires its employees, as a condition of employment, to do any of the following:

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9A-0407/1,
PP-18-19*

↓

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06 2

a. Become members of or become affiliated with a labor organization.

b. Make payments to a labor organization, without the authorization of the employees, exceeding the employees' proportionate share of the cost of collective bargaining, contract administration, and grievance adjustment.

(b) Any taxpayer of this state or any other person who enters into contracts or subcontracts for building construction services may bring an action to require compliance with ~~par~~^{per.} (a). If that person prevails in his or her action, the court shall award to that person reasonable actual attorney fees in addition to other costs allowed to prevailing parties under ch. 814.

-0400/1 dn
:Kmg:

D-Note

This bill also applies to ^{local} professional
football stadium districts, which
were ^{created} created in 1999 Wisconsin Act
167. Is this OK?

MZJ



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

December 27, 2000

MEMORANDUM

To: Representative Owens

From: Jeffery T. Kuesel, Managing Attorney

Re: LRB-0400 Prohibition of all-union agreements on state and local projects; grant expenditures

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-6778 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0400/1dn
MES:kmg:pg

December 22, 2000

This bill also applies to local professional football stadium districts, which were created in 1999 Wisconsin Act 167. Is this OK?

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.state.wi.us