

**2001 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA1-SB55)**

Received: 06/22/2001

Received By: fasttn

Wanted: Soon

Identical to LRB:

For: Assembly Republican Caucus 267-0898

By/Representing: Hartsough

This file may be shown to any legislator: NO

Drafter: fasttn

May Contact:

Addl. Drafters:

Subject: Transportation - miscellaneous

Extra Copies: PJH, ARG - 1

Submit via email: NO

Requester's email:

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**Pre Topic:**

ARC:.....Hartsough - AM13,

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**Topic:**

Unified certification program

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**Instructions:**

See Attached

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**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>
/?	fasttn 06/26/2001	gilfokm 06/26/2001		_____			
/1			pgreensl 06/26/2001	_____	lrb_docadmin 06/26/2001		
/2	fasttn 06/28/2001	jdyer 06/28/2001	rschluet 06/28/2001	_____	lrb_docadmin 06/28/2001		

Vers.    Drafted    Reviewed    Typed    Proofcd    Submitted    Jacketed    Required

FE Sent For:

**<END>**

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/1		1/2 6/28 jld	pgreensl 06/26/2001	_____	lrb_docadmin 06/26/2001		

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*Handwritten marks:*  
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6-28-1

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1?	fasttn	1-6/ King 12/26	6/20 PS	6/26 PS/BenT.			

FE Sent For:

<END>

Earmark \$860,000 to fund the Wisconsin Motorcycle Safety Program. Funding to come from highway safety fund.

### Provision #29, TEA Program

**Statement of Intent:**

Provide \$500,000 in increased funding for the Tea Program. Distribute \$250,000 in 2001-2002 and \$250,000 in 2002-2003.

### Provision #30, Automated Drivers' License Testing

**Statement of Intent:**

Require DOT to conduct a study and report back to the legislature on requiring automated drivers' license testing.

### Provision #31, DOT Assigned Airplanes

**Statement of Intent:**

Amend the Joint Finance language to reduce the DOT compliment of aircraft by two airplanes (three will be assigned to State Patrol, and three assigned to Bureau of Aeronautics). Restore \$87,200 of expenditure authority to appropriation s.20.903 (2)(b) to allow DOA to charge DOT for the use of the planes. Reduce GPR-Earned by \$97,900. Further require an audit on the use and amount of all planes used by state agencies.

### Provision #32, Unified Certification Program

**Statement of Intent:**

Make statutory language changes prepared by DOT Office of General Council to comply with a federally mandated "one-stop shopping" requirement for certification.

### Provision #33, SE WI Regional Freeway

**Statement of Intent:**

Request the following statutory language changes:

## Fast, Timothy

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**From:** Nilsen, Paul  
**Sent:** Wednesday, June 20, 2001 1:11 PM  
**To:** Fast, Timothy  
**Subject:** ucp



Unified DBE  
Certification Draf...



Summary of UCP  
draft.doc

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Paul E. Nilsen  
Office of General Counsel, WisDOT  
Paul.Nilsen@dot.state.wi.us  
(608) 261-0126

## UNIFIED CERTIFICATION PROGRAM FOR DISADVANTAGED BUSINESSES

DBE Program. WisDOT currently administers a program to increase the participation of WisDOT-certified disadvantaged businesses in all federal and state transportation facility contracts. A disadvantaged business ("DBE") is a small business that is owned, managed and operated by minority group members, women or other qualified socially and economically disadvantaged individuals. WisDOT's DBE program:

- Provides a variety of services, including management services (including business plan development, financial package preparation, accounting system development, bonding and marketing assistance) and technical assistance (including review and analysis of plans and specifications, cost estimating and bid preparation).
- Spends approximately 10% of its annual federal aid apportionment for highway, transit and airport purposes (\$25 to \$30 million annually) for DBE participation, in conformity with federal law.

Unified Certification Program (UCP). Beginning in March 2002, federal law requires this state--and all other recipients of federal aid for highway, transit or airport purposes--to participate in a unified certification program (UCP). The UCP creates one-stop certification, which is accepted by all federal transportation aid recipients in this state. Currently, every recipient may certify businesses as DBEs for purposes of DBE programs administered by that recipient. Failure to establish and participate in a qualifying UCP may result in loss of federal transportation aid.

WisDOT's UCP. WisDOT will implement and administer a UCP that meets federal criteria. Under the UCP, a business desiring to participate in a DBE program may apply to WisDOT for certification as a disadvantaged business. WisDOT will certify the business as a DBE, if the business meets federal criteria. Any recipient of federal aid for highway, transit or airport purposes in this state must accept WisDOT's certification for any federal DBE programs administered by that recipient. Implementing the UCP will:

- Ensure receipt by this state of any federal highway aids that are allotted to this state.

- Streamline the application process for DBE certification by avoiding needless duplication of effort. Save businesses and local governments time and money.
- Consistently apply federal DBE certification requirements.

Legislation required. State law must be changed to create a UCP that meets federal criteria. The state law authorizing the UCP should all of the following:

- Require WisDOT to certify as a DBE any business that meets federal criteria; require applications to be decided upon within 90 days, or within not more than 150 days if the certifying authority extends the review period; make UCP certifications valid for three years.
- Require WisDOT to revoke certification issued to an ineligible business.
- Authorize WisDOT to delegate certification authority to any city, village, town or county; make delegations valid for one year.
- Allow a fee to be charged for reviewing a certification application.
- Require WISDOT to maintain and make available a current DBE directory.
- Consider any recipient of federal aid for highway, transit or airport purposes to have consented to participation in the UCP.
- Require certified DBEs to annually submit proof of continued eligibility for DBE certification; require WISDOT to revoke the certification of any business that fails to submit proof of continued eligibility; require certified businesses to notify WISDOT upon the occurrence of any material change that could affect the business's DBE eligibility.
- Terminate DBE certifications made before the UCP is established, and specify that only UCP DBE certifications are effective for federal DBE program purposes.
- Specify a process for appeals and complaints concerning the certification process; require WISDOT to process all certification appeals and complaints.
- Authorize DBE certification relying on DBE certification issued by another state under a federally approved UCP.



1       **Analysis:**

2               Current law requires the department of transportation (DOT) to administer  
3 a disadvantaged business demonstration and training program (DBE program) to  
4 ensure that not less than 10% of certain federal funds for highway, transit and  
5 airport purposes are expended with disadvantaged businesses. Under the program,  
6 “disadvantaged businesses” are those businesses that are at least 51% owned by  
7 minority group members, women or other individuals found by DOT to be  
8 socially and economically disadvantaged according to certain federal criteria, and  
9 whose management and daily business operations are controlled by one or more of  
10 those socially and economically disadvantaged owners. The program expires  
11 when federal law no longer requires such a program as a condition of using  
12 federal funds.

13               Current federal law authorizes any recipient of federal moneys for  
14 highway, transit or airport purposes to certify a business as a disadvantaged  
15 business for purposes of DBE programs administered by that recipient. Beginning  
16 in March 2002, federal law requires any recipient of federal moneys for highway,  
17 transit or airport purposes in this state to participate in a unified certification  
18 program (UCP), under which only one authority in this state certifies businesses  
19 as a disadvantaged business. All recipients of federal moneys for highway, transit  
20 or airport purposes in this state must accept a business’s certification as a  
21 disadvantaged business, if the certification was made under a federally approved  
22 UCP.

23               This bill requires DOT to implement and administer a UCP that meets  
24 federal criteria. Under the UCP, a business desiring to participate in a DBE  
25 program may apply to DOT for certification as a disadvantaged business. DOT  
26 will certify the business as a disadvantaged business if the business meets federal  
27 criteria for such certification. Under the bill, any city, village, town, county or  
28 other entity that receives federal moneys for highway, transit or airport purposes

1 in this state is considered by accepting those moneys to have impliedly consented  
2 to participation in the UCP.

3 The bill also does all of the following:

- 4 1. Authorizes DOT to delegate certification authority to any city, village,  
5 town or county. The delegation is valid for one year. The bill prohibits  
6 DOT from delegating authority to hear appeals concerning certification  
7 decisions.
- 8 2. Makes certifications valid for three years, but requires certified  
9 businesses to annually submit proof of continued eligibility for the  
10 certification. The bill requires DOT to revoke the certification of any  
11 business that fails to submit such proof. The bill also requires certified  
12 businesses to notify DOT upon the occurrence of any material change  
13 that could preclude the business's certification as a disadvantaged  
14 business.
- 15 3. Requires DOT, and any city village town or county to which DOT has  
16 delegated certification authority ("certifying authority"), to complete  
17 review and issue a decision concerning an application within 90 days,  
18 or within not more than 150 days if the certifying authority extends the  
19 review period. The bill also allows certifying authority to charge a fee  
20 for reviewing a certification application.
- 21 4. Requires DOT to maintain a current directory of all businesses  
22 certified under the UCP, or certified by another state with which DOT  
23 has entered a reciprocal certification agreement.
- 24 5. Terminates disadvantaged business certifications made before the  
25 effective date of this act and specifies that only certifications made  
26 under the UCP are effective for DBE program purposes.

1           6. Specifies a process for appeals and complaints concerning the  
2           certification process, and requires DOT to process all such appeals and  
3           complaints.

4           7. Authorizes DOT to certify a business as a disadvantaged business by  
5           relying wholly or partly on such certification made by another state  
6           under a federally approved UCP.

7           FE-SL

8           Section #. Cr; 84.072

9           **84.072 Unified Disadvantaged Business Certification Program. (1)**

10          DEFINITIONS. In this section:

11           (a) "Business" means a sole proprietorship, partnership, limited liability company,  
12          joint venture or corporation that is operated for profit.

13           (am) "Certifying authority" means a municipality or county that is authorized  
14          under sub. (5m), and the department.

15           (b) "Disadvantaged business" means a business that is all of the following:

16           1. At least 51% owned by one or more disadvantaged individuals who are U.S.  
17          citizens or persons lawfully admitted to the United States for permanent residence, as  
18          defined in 8 USC 1101 (a) (20).

19           2. Controlled in its management and daily business operations by one or more of  
20          the disadvantaged individuals who own the business.

21           3. A small business concern within the meaning given in 49 CFR 26.5.

22           (c) "Disadvantaged individual" means an individual found by a certifying  
23          authority to be socially and economically disadvantaged within the meaning given in 49  
24          CFR 26.5.

25           (d) "Municipality" means a city, village or town.

26           (2) CERTIFICATION. (a) Any business may apply to a certifying authority for  
27          certification as a disadvantaged business. All applications shall be sworn and notarized. A

1 certifying authority shall certify as a disadvantaged business any business that meets the  
2 requirements under 49 CFR 26, subpart D, for such certification. A certifying authority  
3 shall follow all certification procedures and standards provided in 49 CFR 26 and all  
4 certification determinations shall strictly conform with 49 CFR 26 and federal guidelines  
5 established under that section. A certifying authority shall complete review and issue a  
6 decision concerning an application within 90 days after receiving the completed  
7 application, except that a certifying authority may extend its review period to not more  
8 than 150 days if within those 90 days the certifying authority provides written notice to  
9 the applicant specifying the reasons for the extension. No person may certify a business as  
10 a disadvantaged business for purposes of 49 CFR 26, except as provided in this section. A  
11 certifying authority may charge and collect reasonable fees for reviewing an application  
12 submitted under this section.

13 (b) No certification of a business as a disadvantaged business for purposes of  
14 federal transportation assistance programs before the effective date of this paragraph ....  
15 [revisor inserts date] is valid for contracts executed after the last day of the fifth month  
16 beginning after the effective date of this paragraph .... [revisor inserts date]. Beginning  
17 on the first day of the sixth month beginning after the effective date of this paragraph....  
18 [revisor inserts date], only a business certified under this section qualifies as a  
19 disadvantaged business enterprise for purposes of 49 CFR 26.

20 (c) 1. Except as provided in sub. (6), a certifying authority is not required to  
21 review an application submitted by a business that has its principal place of business in  
22 another state, unless the business is certified as a disadvantaged business under a unified  
23 certification program that strictly conforms to 49 CFR 26 and to which that other state is  
24 a party.

25 2. If a certifying authority receives an application for a business that is certified as  
26 a disadvantaged business under a federally approved unified certification program  
27 pursuant to 49 CFR 26, the department may do any of the following:

28 a. Grant certification in reliance of the certification determination.

1 b. Make an independent certification determination based on material submitted by  
2 the other certifying agency, supplemented by whatever additional information the  
3 certifying authority may request from the applicant.

4 c. Require the applicant to undergo the application process without regard to the  
5 other certification.

6 (d) A certifying authority shall cooperate with any directive from the federal  
7 government under authority of 49 CFR 26 concerning certification under this section.

8 (e) Certification under this section is valid for three years, unless the department  
9 removes certification under sub. (4) or the certification is removed as provided in 49 CFR  
10 26.87 or 26.89. A certifying authority may not require a business that is certified under  
11 this section to reapply during the three-year period after its certification, unless the factual  
12 basis on which the certification is made materially changes.

13 **(2m) CONFIDENTIALITY.** (a) A certifying authority may not disclose to any person  
14 any information that relates to an individual's statement of net worth, a statement of  
15 experience, a company's financial statement, including the gross receipts of a bidder, or  
16 to any documentation submitted in support of those statements, if the information was  
17 obtained for the purpose of complying with 49 CFR 26, as that section existed on October  
18 1, 1999.

19 (b) This subsection does not prohibit a certifying authority from disclosing  
20 information to any of the following persons:

- 21 1. The person to whom the information relates.
- 22 2. The department.
- 23 3. Any person who has the written consent of the person to whom the information  
24 relates to receive such information.
- 25 4. Any person to whom 49 CFR 26, as that section existed on October 1, 1999,  
26 requires or specifically authorizes the certifying authority to disclose such  
27 information.

1       5. The federal department of transportation, if the certifying authority discloses the  
2       information for the purposes of a certification appeal proceeding in which the  
3       disadvantaged status of the individual is in question.

4       NOTE: This subsection is based on the confidentiality provision included in the  
5       governor's biennial budget bill. I added subd. (b) 4. to comply with appeals provisions of  
6       the UCP law. Because certification decisions may be delegated to locals, I allowed  
7       information to be released to the department.

8       **(3) IMPLIED CONSENT.** Any municipality, county or other person that accepts  
9       federal moneys from the appropriations under s. 20.395 (1) (bx), (2) (ax), (dx), (ex), or  
10      (fx), or (3) (bx), (cx) or (ex), or accepts other federal moneys for highway, transit or  
11      airport purposes, after the effective date of this subsection .... [revisor inserts date] is  
12      considered to have given consent to the unified certification program administered under  
13      this section.

14      **(4) REQUIREMENTS OF CERTIFIED BUSINESSES.** A business certified as a  
15      disadvantaged business shall, within 30 days after a change in the business's size,  
16      disadvantaged status, ownership or control that could preclude its certification as a  
17      disadvantaged business under 49 CFR 26, notify the department of such change by sworn  
18      and notarized statement. A business certified as a disadvantaged business shall submit  
19      annually to the department a sworn notarized statement attesting that there have been no  
20      changes to business's size, disadvantaged status, ownership or control, or gross receipts  
21      that would preclude its certification as a disadvantaged business under 49 CFR 26. The  
22      notice shall include a statement that the business meets the size and gross receipts criteria  
23      for certification, and shall include documentary evidence supporting that statement. The  
24      department shall remove the certification of any disadvantaged business that fails to  
25      provide the statement within 13 months after certification under this section, or within 13  
26      months after it last submitted to the department the information required under this  
27      subsection, whichever is later.

28      **(5) DIRECTORY OF CERTIFIED BUSINESSES.** The department shall maintain a list of  
29      all businesses certified as a disadvantaged business by a certifying authority or by a state

1 that is a party to an agreement under sub. (6). The list shall include the business name,  
2 address, telephone number, and the types of work the business is certified to perform as a  
3 disadvantaged business. The department shall make the list and any updated information  
4 available to any person, at no charge, on the Internet and in printed format. The  
5 department shall update the list at least annually, but shall update the electronic list  
6 available in the Internet by including additions, deletions, or other changes to the list as  
7 soon as the department makes such an addition, deletion, or other change.

8 (5m) CERTIFICATION BY A MUNICIPALITY OR COUNTY. The department may  
9 authorize any municipality or county to certify a business as a disadvantaged business.  
10 The authorization shall be in writing and shall require the municipality or county to  
11 conform strictly to the standards and processes provided in this section and rules  
12 promulgated under this section. The authorization shall be valid for one year. The  
13 authorization shall require the municipality or county to provide written notice to the  
14 department of any certification decision. The written notice shall include all of the  
15 information contained in the directory maintained under sub. (5). Certification by a  
16 municipality or county is valid for three years, unless the department removes  
17 certification under sub. (4) or the certification is removed as provided in 49 CFR 26.87 or  
18 26.89. No municipality or county authorized under this subsection may hear any appeals  
19 or complaints regarding certification decisions.

20 (6) RECIPROCAL CERTIFICATION AGREEMENTS. Notwithstanding sub. (2) (a), the  
21 department may enter into a reciprocal agreement with any other state establishing a joint  
22 unified certification program that strictly conforms to 49 CFR 26. The agreement may  
23 authorize the other state to certify as a disadvantaged business any business that is based  
24 in this state, or may authorize the department to certify as a disadvantaged business any  
25 business based in that other state.

26 (7) CERTIFICATION APPEALS AND COMPLAINTS. (a) Any business whose application  
27 for certification is denied, or is not reviewed within the time limits prescribed in sub. (2)  
28 (a), or whose certification is removed, may appeal that action as provided in 49 CFR  
29 26.89.

1 (b) Any person may file with the department a signed, written complaint that a  
2 business that a certifying authority has certified under this section is not eligible for such  
3 certification. The department shall investigate complaints that it finds are supported by  
4 credible evidence. If upon investigation the department finds reasonable cause to believe  
5 that a business is not eligible for certification, the department shall notify the business of  
6 its findings in writing and shall proceed in the manner provided under 49 CFR 26.87.

7 (8) SUNSET. This section does not apply after the date on which federal law does  
8 not require, as a condition of using federal funds, this state to establish goals for the  
9 participation of disadvantaged businesses or the employment of disadvantaged  
10 individuals in projects using federal funds.

11 **Section #.** Am; 84.076 (1) (a) and (b) (intro.)

12 84.076 (1) (a) "Disadvantaged individual" ~~means a minority group member, a~~  
13 ~~woman or any other individual found to be socially and economically disadvantaged by~~  
14 ~~the department as provided in 49 CFR 23.62, unless successfully challenged as provided~~  
15 ~~in 49 CFR 23.69~~ has the meaning given in s. 84.072 (1) (c).

16 (b) (intro.) "Disadvantaged business" ~~means a sole proprietorship, partnership,~~  
17 ~~limited liability company, joint venture or corporation that fulfills all of the following~~  
18 ~~requirements, as certified by the department:~~ has the meaning given in s. 84.072 (1) (b).

19 **Section #.** Rp; 84.075 (1) (b) 1., 2., and 3.

20 **Section #.** Am; 84.076(1)(a)

21 84.076(1)(a) "Disadvantaged individual" means a minority group member, a  
22 woman or any other individual found by the department to be socially and economically  
23 disadvantaged ~~by the department as provided~~ within the meaning given in 49 CFR ~~23.62~~  
24 26.5, unless successfully challenged as provided in 49 CFR ~~23.69~~ 26.89.

25 **Section #.** Am; 84.076 (3) (intro.)

26 84.076 (3) Bids, contracts. Section 84.06 (2) applies to bids and contracts under  
27 this section, except that the secretary shall reject low bids that do not satisfy the  
28 requirements under sub. (4). ~~The secretary shall establish a list of disadvantaged~~



1 ~~businesses that are eligible to submit bids for contracts awarded under this section and~~  
2 ~~subcontractors who meet the requirements under sub. (4) (b).~~ Each bid submitted under  
3 this section shall include the agreement specified under sub. (4) and all of the following  
4 conditions:

5       **Section #.** Rp; 84.076 (3) (b).

6       **Section #. Nonstatutory provisions.** (1) No person may use the list prepared by  
7 the department of transportation under section 84.076 (3) of the statutes for bids first  
8 advertised after the last day of the fifth month beginning after publication.

9       (2) Not later than the first day of the fourth month beginning after publication, the  
10 department of transportation shall certify as a disadvantaged business under section  
11 84.072 of the statutes any business that, on the date of publication, possesses a valid  
12 certification as a disadvantaged business, as defined in section 84.076 (1) (b) of the  
13 statutes, issued by the department of transportation. The department of transportation is  
14 not required to review any documentation in certifying a business as required by this  
15 subsection.

16       (END)

2001

Date (time) needed

SOON  
(turned in 6/26)

D-NOTE

LRB b 1489 1 1

**ARC CAUCUS BUDGET AMENDMENT  
[ONLY FOR CAUCUS]**

TNF: King:

See form **AMENDMENTS — COMPONENTS & ITEMS.**

**CAUCUS AMENDMENT  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1  
TO 2001 SENATE BILL 55**

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

✓ #. Page 865, line 20: after that line insert:

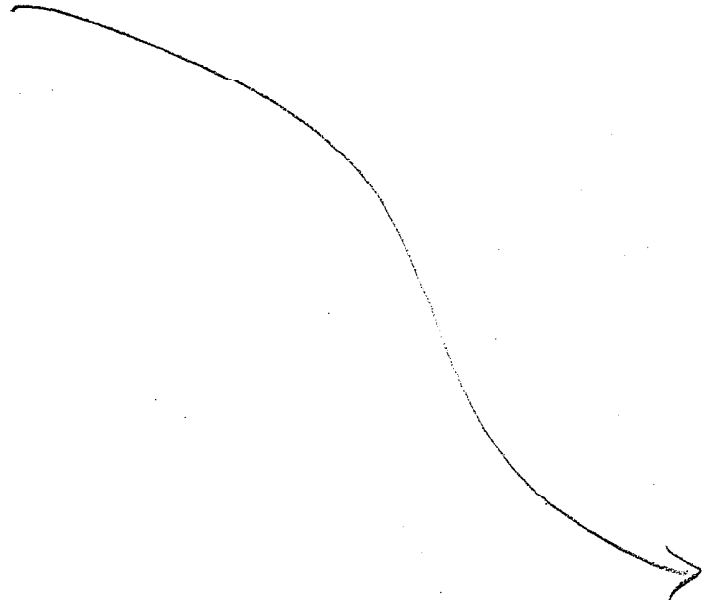
#. Page ..., line ...:

#. Page ..., line ...:

#. Page ..., line ...:

#. Page ..., line ...:

#. Page ..., line ...:



6. ~~Specifies a process for appeals and complaints concerning the certification process, and requires DOT to process all such appeals and complaints.~~

~~Authorizes DOT to certify a business as a disadvantaged business by relying wholly or partly on such certification made by another state under a federally approved UCP~~

~~FE-81~~ 2307 dc.

Section ~~84.072~~ 84.072 of the statutes is created to read:

**84.072 Unified Disadvantaged Business Certification Program. (1)**

DEFINITIONS. In this section:

(a) "Business" means a sole proprietorship, partnership, limited liability company, joint venture, or corporation that is operated for profit. *the department or, if*

(am) "Certifying authority" means ~~a municipality or county that is~~ authorized under sub. (5m), ~~and the department.~~ *a municipality or county*

(b) "Disadvantaged business" means a business that is all of the following:

1. At least 51% owned by one or more disadvantaged individuals who are U.S. citizens or persons lawfully admitted to the United States for permanent residence, as defined in 8 USC 1101 (a) (20).

2. Controlled in its management and daily business operations by one or more of the disadvantaged individuals who own the business.

3. A small business concern within the meaning given in 49 CFR 26.5.

(c) "Disadvantaged individual" means an individual found by a certifying authority to be socially and economically disadvantaged within the meaning given in 49 CFR 26.5.

(d) "Municipality" means a city, village, or town.

(2) CERTIFICATION. (a) Any business may apply to a certifying authority for certification as a disadvantaged business. All applications shall be sworn and notarized. A

1 certifying authority shall certify as a disadvantaged business any business that meets the  
 2 requirements under 49 CFR 26, subpart D, for such certification. A certifying authority  
 3 shall follow all certification procedures and standards provided in 49 CFR 26 and all  
 4 certification determinations shall strictly conform with 49 CFR 26 and federal guidelines  
 5 established under that section. A certifying authority shall complete review and issue a  
 6 decision concerning an application within 90 days after receiving the completed  
 7 application, except that a certifying authority may extend its review period to not more  
 8 than 150 days if ~~within those 90 days~~ the certifying authority provides written notice to  
 9 the applicant specifying the reasons for the extension. No person may certify a business as  
 10 a disadvantaged business for purposes of 49 CFR 26, except as provided in this section. A  
 11 certifying authority may charge and collect reasonable fees for reviewing an application  
 12 submitted under this ~~section~~ paragraph

Move to p. 3

13 (e) ~~(b)~~ No certification of a business as a disadvantaged business for purposes of  
 14 federal transportation assistance programs before the effective date of this paragraph  
 15 [revisor inserts date] is valid for contracts executed after the last day of the ~~5th~~ 5th  
 16 month beginning after the effective date of this paragraph .... [revisor inserts date]. Beginning  
 17 on the first day of the ~~5th~~ 6th month beginning after the effective date of this paragraph....  
 18 [revisor inserts date], only a business certified under this section qualifies as a  
 19 disadvantaged business enterprise for purposes of 49 CFR 26.

20 (b) ~~(a)~~ 1. Except as provided in sub. (6), a certifying authority is not required to  
 21 review an application submitted by a business that has its principal place of business in  
 22 another state, unless the business is certified as a disadvantaged business under a unified  
 23 certification program that strictly conforms to 49 CFR 26 and to which that other state is  
 24 a party.

the department

25 2. If a certifying authority receives an application for a business that is certified as  
 26 a disadvantaged business under a federally approved unified certification program  
 27 pursuant to 49 CFR 26, the department may do any of the following:

28 a. Grant certification in reliance of the certification determination

under the federally approved unified certification program

Insert A

(page 3)

1 ~~A~~ b. Make an independent certification determination based on material submitted by  
2 the other certifying agency, supplemented by whatever additional information the  
3 ~~certifying authority~~ may request from the applicant. department

4 ~~A~~ c. Require the applicant to undergo the application process without regard to the  
5 other certification. (c)

6 ~~(d)~~ A certifying authority shall cooperate with any directive from the federal  
7 government under authority of 49 CFR 26 concerning certification under this section.

8 (d) ~~certification~~ Certification under this section is valid for ~~two~~<sup>3</sup> years, unless the department  
9 removes certification under sub. (4) or the certification is removed as provided in 49 CFR  
10 26.87 or 26.89. A certifying authority may not require a business that is certified under  
11 this section to reapply during the ~~two~~<sup>3</sup>-year period after its certification, unless the factual  
12 basis on which the certification is made materially changes.

Insert from P. 2 "KA"

13 (2m) CONFIDENTIALITY. (a) A certifying authority may not disclose to any person  
14 any information that relates to an individual's statement of net worth, a statement of  
15 experience, <sup>or</sup> a company's financial statement, including the gross receipts of a bidder, or  
16 to any documentation submitted in support of those statements, if the information was  
17 obtained for the purpose of complying with 49 CFR 26, as that section existed on October  
18 1, 1999.

19 (b) This subsection does not prohibit a certifying authority from disclosing  
20 information to any of the following persons:

- 21 1. The person to whom the information relates.
- 22 2. The department.

If the certifying authority is a municipality or county, to

23 4. ~~B2~~ Any person who has the written consent of the person to whom the information  
24 relates to receive such information.

25 5. ~~B2~~ Any person to whom 49 CFR 26, as that section existed on October 1, 1999,  
26 requires or specifically authorizes the certifying authority to disclose such  
27 information.

~~A~~ 3. If the certifying authority is the department, to a municipality or county authorized under sub. (5m).

6.

1 <sup>to</sup> The federal department of transportation, if the certifying authority discloses the  
2 information for the purposes of a certification appeal proceeding in which the  
3 disadvantaged status of the individual is in question.

4 ~~NOTE: This subsection is based on the confidentiality provision included in the~~  
5 ~~governor's biennial budget bill. I added subd. (b) 4. to comply with appeals provisions of~~  
6 ~~the UCP law. Because certification decisions may be delegated to locals, I allowed~~  
7 ~~information to be released to the department.~~

8 (3) IMPLIED CONSENT. Any municipality, county, or other person that accepts  
9 federal moneys from the appropriations under s. 20.395 (1) (bx), (2) (ax), (dx), ~~(ex)~~ or  
10 (fx), or (3) (bx), (cx) or (ex), or accepts other federal moneys for highway, transit, or  
11 airport purposes, after the effective date of this subsection .... [revisor inserts date] is  
12 considered to have given consent to the unified certification program administered under  
13 this section.

disadvantaged  
business

14 (4) REQUIREMENTS OF CERTIFIED BUSINESSES. A business certified as a  
15 disadvantaged business shall, within 30 days after a change in the business's size,  
16 disadvantaged status, ownership, or control that could preclude its certification as a  
17 disadvantaged business under 49 CFR 26, notify the department of such change by sworn  
18 and notarized statement. A business certified as a disadvantaged business shall submit  
19 annually to the department a sworn, notarized statement attesting that there have been no  
20 changes to business's size, disadvantaged status, ownership, or control, or gross receipts,  
21 that would preclude its certification as a disadvantaged business under 49 CFR 26. The  
22 notice shall include a statement that the business meets the size and gross receipts criteria  
23 for certification, and shall include documentary evidence supporting that statement. The  
24 department shall remove the certification of any disadvantaged business that fails to  
25 provide the statement within 13 months after certification under this section, or within 13  
26 months after it last submitted to the department the information required under this  
27 subsection, whichever is later.

28 (5) DIRECTORY OF CERTIFIED BUSINESSES. The department shall maintain a list of  
29 all businesses certified as a disadvantaged business by a certifying authority or by a state

1 that is a party to an agreement under sub. (6). The list shall include the business name,  
 2 address, telephone number, and ~~the~~ types of work <sup>that</sup> the business is certified to perform as a  
 3 disadvantaged business. The department shall make the list and any updated information  
 4 available to any person, at no charge, on the Internet and in printed format. The  
 5 department shall update the list at least annually, but shall update the electronic list  
 6 available <sup>on</sup> in the Internet by including additions, deletions, or other changes to the list as  
 7 soon as the department makes such an addition, deletion, or other change.

8 (5m) CERTIFICATION BY A MUNICIPALITY OR COUNTY. The department may  
 9 authorize any municipality or county to certify a business as a disadvantaged business.  
 10 The authorization shall be in writing and shall require the municipality or county to  
 11 conform strictly to the standards and processes provided in this section and rules  
 12 promulgated under this section. The authorization shall be valid for one year. The  
 13 authorization shall require the municipality or county to provide written notice to the  
 14 department of any certification decision. The written notice shall include all of the  
 15 information contained in the directory maintained under sub. (5). Certification by a  
 16 municipality or county is valid for ~~two~~<sup>3</sup> years, unless the department removes  
 17 certification under sub. (4) or the certification is removed as provided in 49 CFR 26.87 or  
 18 26.89. No municipality or county authorized under this subsection may hear any appeals  
 19 or complaints regarding certification decisions.

The authorization shall require the municipality or county to forward applications to the department under sub. (2)(b) 3.

20 (6) RECIPROCAL CERTIFICATION AGREEMENTS. Notwithstanding sub. (2) (a), the  
 21 department may enter into a reciprocal agreement with any other state establishing a joint  
 22 unified certification program that strictly conforms to 49 CFR 26. The agreement may  
 23 authorize the other state to certify as a disadvantaged business any business that is based  
 24 in this state, or may authorize the department to certify as a disadvantaged business any  
 25 business based in that other state.

26 (7) CERTIFICATION APPEALS AND COMPLAINTS. (a) Any business whose application  
 27 for certification is denied, or is not reviewed within the time limits prescribed in sub. (2)  
 28 (a), or whose certification is removed, may appeal that action as provided in 49 CFR  
 29 26.89.

to the department

1 (b) Any person may file with the department a signed, written complaint that a  
2 business that a certifying authority has certified under this section is not eligible for such  
3 certification. The department shall investigate complaints that it finds are supported by  
4 credible evidence. Upon investigation the department finds reasonable cause to believe  
5 that a business is not eligible for certification, the department shall notify the business of  
6 its findings in writing and shall proceed in the manner provided under 49 CFR 26.87.

7 (8) ~~SENSE~~. This section does not apply after the date on which federal law does if  
8 not require, as a condition of using federal funds, this state to establish goals for the  
9 participation of disadvantaged businesses or the employment of disadvantaged  
10 individuals in projects using federal funds.

CS  
= APPLICABILITY.



2307de.

Section # 84.076 (1) (a) of the statutes is amended to read:

84.076 (1) (a) "Disadvantaged individual" means a minority group member, a woman or any other individual found to be socially and economically disadvantaged by the department as provided in 49 CFR ~~23.62~~, unless successfully challenged as provided in 49 CFR ~~23.69~~.

History: 1987 a. 399; 1989 a. 31; 1991 a. 39; 1993 a. 112; 1995 a. 113; 1997 a. 27.

by the department

26.5

26.89

within the meaning given

2307dg.


Section # 84.076 (1) (b) (intro.) of the statutes is renumbered 84.076 (1) (b) and amended to read:

84.076 (1) (b) "Disadvantaged business" means ~~a sole proprietorship, partnership, limited liability company, joint venture or corporation that fulfills all of the following requirements, as certified by the department:~~

History: 1987 a. 399; 1989 a. 31; 1991 a. 39; 1993 a. 112; 1995 a. 113; 1997 a. 27.

has the meaning given in s. 84.072 (1)(b). ✓

SECTION 2307dh. RP; 84.076 (1)(b) 1., 2. and 3.



2307dj.

Section # 84.076 (3) (intro.) and (a) of the statutes are consolidated, renumbered 84.076 (3) and amended to read:

84.076 (3) BIDS, CONTRACTS. Section 84.06 (2) applies to bids and contracts under this section, except that the secretary shall reject low bids that do not satisfy the requirements under sub. (4).

~~The secretary shall establish a list of disadvantaged businesses that are eligible to submit bids for contracts awarded under this section and subcontractors who meet the requirements under sub. (4)~~

~~(b).~~ Each bid submitted under this section shall include the agreement specified under sub. (4) and ~~all of the following conditions:~~

History: 1987 a. 399; 1989 a. 31; 1991 a. 39; 1993 a. 112; 1995 a. 113; 1997 a. 27.

No A

~~(a)~~ A goal that at least 25% of the total number of workers in all construction trades employed on the project will be disadvantaged individuals.

History: 1987 a. 399; 1989 a. 31; 1991 a. 39; 1993 a. 112; 1995 a. 113; 1997 a. 27.

, as a condition, a

SECTION 2307dk. RP; 84.076 (3)(b)

W

# Page 1356, line 13 after that line insert:

2307 dm.

Section # 84.076 (4) (b) of the statutes is amended to read:

84.076 (4) (b) Obtain from a subcontractor that has experience in providing training to disadvantaged individuals a program of preapprenticeship training that satisfies the requirements established by the secretary under sub. (2) (b), and assure that the subcontractor has experience in providing a program of management and technical assistance to disadvantaged business contractors, and that the subcontractor's management and technical assistance program satisfies the requirements established by the secretary under sub. (2) (b) and includes all of the requirements of par. (a) 2. A subcontractor under this paragraph need not be a disadvantaged business, but if the subcontractor is not a disadvantaged business, it may not be included within the goal established under sub. (3) ~~(b)~~. "

History: 1987 a. 399; 1989 a. 31; 1991 a. 39; 1993 a. 112; 1995 a. 113; 1997 a. 27.

✓ #, Page 1356, line 13: after that line insert §:

VX

§ " (2) ~~(b)~~ UNIFIED DISADVANTAGED BUSINESS  
CERTIFICATION PROGRAM.

§ (a) No person may use the list of disadvantaged  
businesses established by the department of transportation  
under section 84.076 (3), 1999 stats., for bids

first advertised after the last day of the 5th  
month beginning after the effective date of this

paragraph. *Notwithstanding section 84.072 of the statutes,  
as created by this act,*

§ (b) ~~(not)~~ later than the first day of the 4th  
month beginning after the effective date of this

paragraph, the department of transportation shall  
certify as a disadvantaged business under section

84.072 of the statutes, as created by this act, any

business that, on the effective date of this paragraph,

is certified by the department as a disadvantaged  
business for the purposes of

section 84.076, 1999 stats. Notwithstanding

2012

✓  
section 84.072 of the statutes, as created by this  
act, the department of transportation is not required  
to review any documentation in certifying under  
this paragraph a business as a disadvantaged  
business under section 84.072 of the statutes, as  
created by this act." ✓

(END)

D-NOTE

Insert A

3. If a certifying authority that is a municipality or county receives an application for a business that is certified as a disadvantaged business under a federally approved unified certification program pursuant to 49 CFR 26, the certifying authority shall forward the application to the department for purposes of subd. 2.

LRB61489/1dn

TNF: *KMG*

DRAFTER'S NOTE

ATTN: Melanie Hartsough

This amendment is a revised version of a draft submitted to me by Mr. Paul Nilsen of DOT's Office of General Counsel. Proposed s. 84.072(3) does not reference s. 20,395<sup>2</sup>(~~1~~)(ex), stats., because that appropriation account is repealed by ASA 1 to 2001 SB-55. If the repeal is eliminated by operation of another amendment to ASA 1 to 2001 SB-55, this amendment will need to be reconciled with that amendment.

TNF



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb1489/1dn  
TNF:kmg:pg

June 26, 2001

ATTN: Melanie Hartsough

This amendment is a revised version of a draft submitted to me by Mr. Paul Nilsen of DOT's Office of General Counsel. Proposed s. 84.072 (3) does not reference s. 20.395 (2) (ex), stats., because the appropriation account is repealed by ASA 1 to 2001 SB-55. If the repeal is eliminated by operation of another amendment to ASA 1 to 2001 SB-55, this amendment will need to be reconciled with that amendment.

Timothy N. Fast  
Senior Legislative Attorney  
Phone: (608) 266-9739  
E-mail: [tim.fast@legis.state.wi.us](mailto:tim.fast@legis.state.wi.us)



D-NOTE  
State of Wisconsin  
2001 - 2002 LEGISLATURE

2 (No draft  
LRBb1489M makes  
TNF:kmg:pg has  
↑ been  
stays run)

WANTED soon  
turned in 6/28

ARC:.....Hartsough – AM13, Unified certification program

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

**CAUCUS ASSEMBLY AMENDMENT**

**TO ASSEMBLY SUBSTITUTE AMENDMENT 1,**

**TO 2001 SENATE BILL 55**

Only  
change  
p. 9

- 1           At the locations indicated, amend the substitute amendment as follows:
- 2           **1.** Page 865, line 20: after that line insert:
- 3           **"SECTION 2307dc.** 84.072 of the statutes is created to read:
- 4           **84.072 Unified disadvantaged business certification program. (1)**
- 5           **DEFINITIONS.** In this section:
- 6           (a) "Business" means a sole proprietorship, partnership, limited liability
- 7           company, joint venture, or corporation that is operated for profit.
- 8           (am) "Certifying authority" means the department or, if authorized under sub.
- 9           (5m), a municipality or county.
- 10          (b) "Disadvantaged business" means a business that is all of the following:

1           1. At least 51% owned by one or more disadvantaged individuals who are U.S.  
2 citizens or persons lawfully admitted to the United States for permanent residence,  
3 as defined in 8 USC 1101 (a) (20).

4           2. Controlled in its management and daily business operations by one or more  
5 of the disadvantaged individuals who own the business.

6           3. A small business concern within the meaning given in 49 CFR 26.5.

7           (c) “Disadvantaged individual” means an individual found by a certifying  
8 authority to be socially and economically disadvantaged within the meaning given  
9 in 49 CFR 26.5.

10          (d) “Municipality” means a city, village, or town.

11          **(2) CERTIFICATION.** (a) Any business may apply to a certifying authority for  
12 certification as a disadvantaged business. All applications shall be sworn and  
13 notarized. A certifying authority shall certify as a disadvantaged business any  
14 business that meets the requirements under 49 CFR 26, subpart D, for such  
15 certification. A certifying authority shall follow all certification procedures and  
16 standards provided in 49 CFR 26 and all certification determinations shall strictly  
17 conform with 49 CFR 26 and federal guidelines established under that section. A  
18 certifying authority shall complete review and issue a decision concerning an  
19 application within 90 days after receiving the completed application, except that a  
20 certifying authority may extend its review period to not more than 150 days if, within  
21 those 90 days, the certifying authority provides written notice to the applicant  
22 specifying the reasons for the extension. No person may certify a business as a  
23 disadvantaged business for purposes of 49 CFR 26, except as provided in this section.  
24 A certifying authority may charge and collect reasonable fees for reviewing an  
25 application submitted under this paragraph.

1 (b) 1. Except as provided in sub. (6), a certifying authority is not required to  
2 review an application submitted by a business that has its principal place of business  
3 in another state, unless the business is certified as a disadvantaged business under  
4 a unified certification program that strictly conforms to 49 CFR 26 and to which that  
5 other state is a party.

6 2. If the department receives an application for a business that is certified as  
7 a disadvantaged business under a federally approved unified certification program  
8 pursuant to 49 CFR 26, the department may do any of the following:

9 a. Grant certification in reliance of the certification determination under the  
10 federally approved unified certification program.

11 b. Make an independent certification determination based on material  
12 submitted by the other certifying agency, supplemented by whatever additional  
13 information the department may request from the applicant.

14 c. Require the applicant to undergo the application process without regard to  
15 the other certification.

16 3. If a certifying authority that is a municipality or county receives an  
17 application for a business that is certified as a disadvantaged business under a  
18 federally approved unified certification program pursuant to 49 CFR 26, the  
19 certifying authority shall forward the application to the department for purposes of  
20 subd. 2.

21 (c) A certifying authority shall cooperate with any directive from the federal  
22 government under authority of 49 CFR 26 concerning certification under this  
23 section.

24 (d) Certification under this section is valid for 3 years, unless the department  
25 removes certification under sub. (4) or the certification is removed as provided in 49

1 CFR 26.87 or 26.89. A certifying authority may not require a business that is  
2 certified under this section to reapply during the 3-year period after its certification,  
3 unless the factual basis on which the certification is made materially changes.

4 (e) No certification of a business as a disadvantaged business for purposes of  
5 federal transportation assistance programs before the effective date of this  
6 paragraph .... [revisor inserts date], is valid for contracts executed after the last day  
7 of the 5th month beginning after the effective date of this paragraph .... [revisor  
8 inserts date]. Beginning on the first day of the 6th month beginning after the  
9 effective date of this paragraph.... [revisor inserts date], only a business certified  
10 under this section qualifies as a disadvantaged business enterprise for purposes of  
11 49 CFR 26.

12 **(2m) CONFIDENTIALITY.** (a) A certifying authority may not disclose to any  
13 person any information that relates to an individual's statement of net worth, a  
14 statement of experience, or a company's financial statement, including the gross  
15 receipts of a bidder, or to any documentation submitted in support of those  
16 statements, if the information was obtained for the purpose of complying with 49  
17 CFR 26, as that section existed on October 1, 1999.

18 (b) This subsection does not prohibit a certifying authority from disclosing  
19 information to any of the following persons:

- 20 1. The person to whom the information relates.
- 21 2. If the certifying authority is a municipality or county, to the department.
- 22 3. If the certifying authority is the department, to a municipality or county  
23 authorized under sub. (5m).
- 24 4. Any person who has the written consent of the person to whom the  
25 information relates to receive such information.

1           5. Any person to whom 49 CFR 26, as that section existed on October 1, 1999,  
2 requires or specifically authorizes the certifying authority to disclose such  
3 information.

4           6. The federal department of transportation, if the certifying authority  
5 discloses the information for the purposes of a certification appeal proceeding in  
6 which the disadvantaged status of the individual is in question.

7           **(3) IMPLIED CONSENT.** Any municipality, county, or other person that accepts  
8 federal moneys from the appropriations under s. 20.395 (1) (bx), (2) (ax), (dx), or (fx),  
9 or (3) (bx), (cx), or (ex), or accepts other federal moneys for highway, transit, or airport  
10 purposes, after the effective date of this subsection .... [revisor inserts date], is  
11 considered to have given consent to the unified certification disadvantage business  
12 program administered under this section.

13           **(4) REQUIREMENTS OF CERTIFIED BUSINESSES.** A business certified as a  
14 disadvantaged business shall, within 30 days after a change in the business's size,  
15 disadvantaged status, ownership, or control that could preclude its certification as  
16 a disadvantaged business under 49 CFR 26, notify the department of such change  
17 by sworn and notarized statement. A business certified as a disadvantaged business  
18 shall submit annually to the department a sworn, notarized statement attesting that  
19 there have been no changes to business's size, disadvantaged status, ownership, or  
20 control, or gross receipts, that would preclude its certification as a disadvantaged  
21 business under 49 CFR 26. The notice shall include a statement that the business  
22 meets the size and gross receipts criteria for certification, and shall include  
23 documentary evidence supporting that statement. The department shall remove the  
24 certification of any disadvantaged business that fails to provide the statement within  
25 13 months after certification under this section, or within 13 months after it last

1 submitted to the department the information required under this subsection,  
2 whichever is later.

3 (5) DIRECTORY OF CERTIFIED BUSINESSES. The department shall maintain a list  
4 of all businesses certified as a disadvantaged business by a certifying authority or  
5 by a state that is a party to an agreement under sub. (6). The list shall include the  
6 business name, address, telephone number, and types of work that the business is  
7 certified to perform as a disadvantaged business. The department shall make the  
8 list and any updated information available to any person, at no charge, on the  
9 Internet and in printed format. The department shall update the list at least  
10 annually, but shall update the electronic list available on the Internet by including  
11 additions, deletions, or other changes to the list as soon as the department makes  
12 such an addition, deletion, or other change.

13 (5m) CERTIFICATION BY A MUNICIPALITY OR COUNTY. The department may  
14 authorize any municipality or county to certify a business as a disadvantaged  
15 business. The authorization shall be in writing and shall require the municipality  
16 or county to conform strictly to the standards and processes provided in this section  
17 and rules promulgated under this section. The authorization shall be valid for one  
18 year. The authorization shall require the municipality or county to provide written  
19 notice to the department of any certification decision. The written notice shall  
20 include all of the information contained in the directory maintained under sub. (5).  
21 The authorization shall require the municipality or county to forward applications  
22 to the department under sub. (2) (b) 3. Certification by a municipality or county is  
23 valid for 3 years, unless the department removes certification under sub. (4) or the  
24 certification is removed as provided in 49 CFR 26.87 or 26.89. No municipality or

1 county authorized under this subsection may hear any appeals or complaints  
2 regarding certification decisions.

3 (6) RECIPROCAL CERTIFICATION AGREEMENTS. Notwithstanding sub. (2) (a), the  
4 department may enter into a reciprocal agreement with any other state establishing  
5 a joint unified certification program that strictly conforms to 49 CFR 26. The  
6 agreement may authorize the other state to certify as a disadvantaged business any  
7 business that is based in this state, or may authorize the department to certify as a  
8 disadvantaged business any business based in that other state.

9 (7) CERTIFICATION APPEALS AND COMPLAINTS. (a) Any business whose application  
10 for certification is denied, or is not reviewed within the time limits prescribed in sub.  
11 (2) (a), or whose certification is removed, may appeal that action as provided in 49  
12 CFR 26.89 to the department.

13 (b) Any person may file with the department a signed, written complaint that  
14 a business that a certifying authority has certified under this section is not eligible  
15 for such certification. The department shall investigate complaints that it finds are  
16 supported by credible evidence. If, upon investigation, the department finds  
17 reasonable cause to believe that a business is not eligible for certification, the  
18 department shall notify the business of its findings in writing and shall proceed in  
19 the manner provided under 49 CFR 26.87.

20 (8) APPLICABILITY. This section does not apply if federal law does not require,  
21 as a condition of using federal funds, this state to establish goals for the participation  
22 of disadvantaged businesses or the employment of disadvantaged individuals in  
23 projects using federal funds.

24 SECTION 2307de. 84.076 (1) (a) of the statutes is amended to read:



1           84.076 (1) (a) "Disadvantaged individual" means a minority group member, a  
2 woman or any other individual found by the department to be socially and  
3 economically disadvantaged by the department as provided within the meaning  
4 given in 49 CFR ~~23.62~~ 26.5, unless successfully challenged as provided in 49 CFR  
5 ~~23.69~~ 26.89.

6           **SECTION 2307dg.** 84.076 (1) (b) (intro.) of the statutes is renumbered 84.076  
7 (1) (b) and is amended to read:

8           84.076 (1) (b) "Disadvantaged business" ~~means a sole proprietorship,~~  
9 ~~partnership, limited liability company, joint venture or corporation that fulfills all~~  
10 ~~of the following requirements, as certified by the department:~~ has the meaning given  
11 in s. 84.072 (1) (b).

12           **SECTION 2307dh.** 84.076 (1) (b) 1., 2. and 3. of the statutes are repealed.

13           **SECTION 2307dj.** 84.076 (3) (intro.) and (a) of the statutes are consolidated,  
14 renumbered 84.076 (3) and amended to read:

15           84.076 (3) BIDS, CONTRACTS. Section 84.06 (2) applies to bids and contracts  
16 under this section, except that the secretary shall reject low bids that do not satisfy  
17 the requirements under sub. (4). ~~The secretary shall establish a list of disadvantaged~~  
18 ~~businesses that are eligible to submit bids for contracts awarded under this section~~  
19 ~~and subcontractors who meet the requirements under sub. (4) (b).~~ Each bid  
20 submitted under this section shall include the agreement specified under sub. (4) and  
21 all of the following conditions: ~~(a) A, as a condition, a goal that at least 25% of the~~  
22 ~~total number of workers in all construction trades employed on the project will be~~  
23 ~~disadvantaged individuals.~~

24           **SECTION 2307dk.** 84.076 (3) (b) of the statutes is repealed.

1           84.076 (4) (b) Obtain from a subcontractor that has experience in providing  
 2 training to disadvantaged individuals a program of preapprenticeship training that  
 3 satisfies the requirements established by the secretary under sub. (2) (b), and assure  
 4 that the subcontractor has experience in providing a program of management and  
 5 technical assistance to disadvantaged business contractors, and that the  
 6 subcontractor's management and technical assistance program satisfies the  
 7 requirements established by the secretary under sub. (2) (b) and includes all of the  
 8 requirements of par. (a) 2. A subcontractor under this paragraph need not be a  
 9 disadvantaged business, but if the subcontractor is not a disadvantaged business, it  
 10 may not be included within the goal established under sub. (3) (b)."

11           **2.** Page 1356, line 13: after that line insert:

12           **#SECTION 2307dm.** 84.076 (4) (b) of the statutes is amended to read:

13           (2vx) UNIFIED DISADVANTAGED BUSINESS CERTIFICATION PROGRAM.

14           (a) No person may use the list of disadvantaged businesses established by the  
 15 department of transportation under section 84.076 (3), 1999 stats., for bids first  
 16 advertised after the last day of the 5th month beginning after the effective date of  
 17 this paragraph.

18           (b) Notwithstanding section 84.072 of the statutes, as created by this act, no  
 19 later than the first day of the 4th month beginning after the effective date of this  
 20 paragraph, the department of transportation shall certify as a disadvantaged  
 21 business under section 84.072 of the statutes, as created by this act, any business  
 22 that, on the effective date of this paragraph, is certified by the department as a  
 23 disadvantaged business for the purposes of section 84.076, 1999 stats.  
 24 Notwithstanding section 84.072 of the statutes, as created by this act, the

1 department of transportation is not required to review any documentation in  
2 certifying under this paragraph a business as a disadvantaged business under  
3 section 84.072 of the statutes, as created by this act.”

4

(END)

D-NOTE

LRBb1489/2dn

TNF: jld

DRAFTER'S NOTE

This draft makes a minor, technical change  
on page 9.

TNF

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb1489/2dn  
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This draft makes a minor, technical change on page 9.

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ARC:.....Hartsough – AM13, Unified certification program

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

**CAUCUS ASSEMBLY AMENDMENT**

**TO ASSEMBLY SUBSTITUTE AMENDMENT 1,**

**TO 2001 SENATE BILL 55**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 865, line 20: after that line insert:

3 **“SECTION 2307dc.** 84.072 of the statutes is created to read:

4 **84.072 Unified disadvantaged business certification program. (1)**

5 **DEFINITIONS.** In this section:

6 (a) “Business” means a sole proprietorship, partnership, limited liability  
7 company, joint venture, or corporation that is operated for profit.

8 (am) “Certifying authority” means the department or, if authorized under sub.  
9 (5m), a municipality or county.

10 (b) “Disadvantaged business” means a business that is all of the following:

1           1. At least 51% owned by one or more disadvantaged individuals who are U.S.  
2 citizens or persons lawfully admitted to the United States for permanent residence,  
3 as defined in 8 USC 1101 (a) (20).

4           2. Controlled in its management and daily business operations by one or more  
5 of the disadvantaged individuals who own the business.

6           3. A small business concern within the meaning given in 49 CFR 26.5.

7           (c) “Disadvantaged individual” means an individual found by a certifying  
8 authority to be socially and economically disadvantaged within the meaning given  
9 in 49 CFR 26.5.

10          (d) “Municipality” means a city, village, or town.

11          (2) CERTIFICATION. (a) Any business may apply to a certifying authority for  
12 certification as a disadvantaged business. All applications shall be sworn and  
13 notarized. A certifying authority shall certify as a disadvantaged business any  
14 business that meets the requirements under 49 CFR 26, subpart D, for such  
15 certification. A certifying authority shall follow all certification procedures and  
16 standards provided in 49 CFR 26 and all certification determinations shall strictly  
17 conform with 49 CFR 26 and federal guidelines established under that section. A  
18 certifying authority shall complete review and issue a decision concerning an  
19 application within 90 days after receiving the completed application, except that a  
20 certifying authority may extend its review period to not more than 150 days if, within  
21 those 90 days, the certifying authority provides written notice to the applicant  
22 specifying the reasons for the extension. No person may certify a business as a  
23 disadvantaged business for purposes of 49 CFR 26, except as provided in this section.  
24 A certifying authority may charge and collect reasonable fees for reviewing an  
25 application submitted under this paragraph.

1 (b) 1. Except as provided in sub. (6), a certifying authority is not required to  
2 review an application submitted by a business that has its principal place of business  
3 in another state, unless the business is certified as a disadvantaged business under  
4 a unified certification program that strictly conforms to 49 CFR 26 and to which that  
5 other state is a party.

6 2. If the department receives an application for a business that is certified as  
7 a disadvantaged business under a federally approved unified certification program  
8 pursuant to 49 CFR 26, the department may do any of the following:

9 a. Grant certification in reliance of the certification determination under the  
10 federally approved unified certification program.

11 b. Make an independent certification determination based on material  
12 submitted by the other certifying agency, supplemented by whatever additional  
13 information the department may request from the applicant.

14 c. Require the applicant to undergo the application process without regard to  
15 the other certification.

16 3. If a certifying authority that is a municipality or county receives an  
17 application for a business that is certified as a disadvantaged business under a  
18 federally approved unified certification program pursuant to 49 CFR 26, the  
19 certifying authority shall forward the application to the department for purposes of  
20 subd. 2.

21 (c) A certifying authority shall cooperate with any directive from the federal  
22 government under authority of 49 CFR 26 concerning certification under this  
23 section.

24 (d) Certification under this section is valid for 3 years, unless the department  
25 removes certification under sub. (4) or the certification is removed as provided in 49



1 CFR 26.87 or 26.89. A certifying authority may not require a business that is  
2 certified under this section to reapply during the 3-year period after its certification,  
3 unless the factual basis on which the certification is made materially changes.

4 (e) No certification of a business as a disadvantaged business for purposes of  
5 federal transportation assistance programs before the effective date of this  
6 paragraph .... [revisor inserts date], is valid for contracts executed after the last day  
7 of the 5th month beginning after the effective date of this paragraph .... [revisor  
8 inserts date]. Beginning on the first day of the 6th month beginning after the  
9 effective date of this paragraph.... [revisor inserts date], only a business certified  
10 under this section qualifies as a disadvantaged business enterprise for purposes of  
11 49 CFR 26.

12 **(2m) CONFIDENTIALITY.** (a) A certifying authority may not disclose to any  
13 person any information that relates to an individual's statement of net worth, a  
14 statement of experience, or a company's financial statement, including the gross  
15 receipts of a bidder, or to any documentation submitted in support of those  
16 statements, if the information was obtained for the purpose of complying with 49  
17 CFR 26, as that section existed on October 1, 1999.

18 (b) This subsection does not prohibit a certifying authority from disclosing  
19 information to any of the following persons:

- 20 1. The person to whom the information relates.
- 21 2. If the certifying authority is a municipality or county, to the department.
- 22 3. If the certifying authority is the department, to a municipality or county  
23 authorized under sub. (5m).
- 24 4. Any person who has the written consent of the person to whom the  
25 information relates to receive such information.

1           5. Any person to whom 49 CFR 26, as that section existed on October 1, 1999,  
2 requires or specifically authorizes the certifying authority to disclose such  
3 information.

4           6. The federal department of transportation, if the certifying authority  
5 discloses the information for the purposes of a certification appeal proceeding in  
6 which the disadvantaged status of the individual is in question.

7           (3) IMPLIED CONSENT. Any municipality, county, or other person that accepts  
8 federal moneys from the appropriations under s. 20.395 (1) (bx), (2) (ax), (dx), or (fx),  
9 or (3) (bx), (cx), or (ex), or accepts other federal moneys for highway, transit, or airport  
10 purposes, after the effective date of this subsection .... [revisor inserts date], is  
11 considered to have given consent to the unified certification disadvantage business  
12 program administered under this section.

13           (4) REQUIREMENTS OF CERTIFIED BUSINESSES. A business certified as a  
14 disadvantaged business shall, within 30 days after a change in the business's size,  
15 disadvantaged status, ownership, or control that could preclude its certification as  
16 a disadvantaged business under 49 CFR 26, notify the department of such change  
17 by sworn and notarized statement. A business certified as a disadvantaged business  
18 shall submit annually to the department a sworn, notarized statement attesting that  
19 there have been no changes to business's size, disadvantaged status, ownership, or  
20 control, or gross receipts, that would preclude its certification as a disadvantaged  
21 business under 49 CFR 26. The notice shall include a statement that the business  
22 meets the size and gross receipts criteria for certification, and shall include  
23 documentary evidence supporting that statement. The department shall remove the  
24 certification of any disadvantaged business that fails to provide the statement within  
25 13 months after certification under this section, or within 13 months after it last

1 submitted to the department the information required under this subsection,  
2 whichever is later.

3 (5) DIRECTORY OF CERTIFIED BUSINESSES. The department shall maintain a list  
4 of all businesses certified as a disadvantaged business by a certifying authority or  
5 by a state that is a party to an agreement under sub. (6). The list shall include the  
6 business name, address, telephone number, and types of work that the business is  
7 certified to perform as a disadvantaged business. The department shall make the  
8 list and any updated information available to any person, at no charge, on the  
9 Internet and in printed format. The department shall update the list at least  
10 annually, but shall update the electronic list available on the Internet by including  
11 additions, deletions, or other changes to the list as soon as the department makes  
12 such an addition, deletion, or other change.

13 (5m) CERTIFICATION BY A MUNICIPALITY OR COUNTY. The department may  
14 authorize any municipality or county to certify a business as a disadvantaged  
15 business. The authorization shall be in writing and shall require the municipality  
16 or county to conform strictly to the standards and processes provided in this section  
17 and rules promulgated under this section. The authorization shall be valid for one  
18 year. The authorization shall require the municipality or county to provide written  
19 notice to the department of any certification decision. The written notice shall  
20 include all of the information contained in the directory maintained under sub. (5).  
21 The authorization shall require the municipality or county to forward applications  
22 to the department under sub. (2) (b) 3. Certification by a municipality or county is  
23 valid for 3 years, unless the department removes certification under sub. (4) or the  
24 certification is removed as provided in 49 CFR 26.87 or 26.89. No municipality or

1 county authorized under this subsection may hear any appeals or complaints  
2 regarding certification decisions.

3 (6) RECIPROCAL CERTIFICATION AGREEMENTS. Notwithstanding sub. (2) (a), the  
4 department may enter into a reciprocal agreement with any other state establishing  
5 a joint unified certification program that strictly conforms to 49 CFR 26. The  
6 agreement may authorize the other state to certify as a disadvantaged business any  
7 business that is based in this state, or may authorize the department to certify as a  
8 disadvantaged business any business based in that other state.

9 (7) CERTIFICATION APPEALS AND COMPLAINTS. (a) Any business whose application  
10 for certification is denied, or is not reviewed within the time limits prescribed in sub.  
11 (2) (a), or whose certification is removed, may appeal that action as provided in 49  
12 CFR 26.89 to the department.

13 (b) Any person may file with the department a signed, written complaint that  
14 a business that a certifying authority has certified under this section is not eligible  
15 for such certification. The department shall investigate complaints that it finds are  
16 supported by credible evidence. If, upon investigation, the department finds  
17 reasonable cause to believe that a business is not eligible for certification, the  
18 department shall notify the business of its findings in writing and shall proceed in  
19 the manner provided under 49 CFR 26.87.

20 (8) APPLICABILITY. This section does not apply if federal law does not require,  
21 as a condition of using federal funds, this state to establish goals for the participation  
22 of disadvantaged businesses or the employment of disadvantaged individuals in  
23 projects using federal funds.

24 **SECTION 2307de.** 84.076 (1) (a) of the statutes is amended to read:

1           84.076 (1) (a) “Disadvantaged individual” means a minority group member, a  
2 woman or any other individual found by the department to be socially and  
3 economically disadvantaged ~~by the department as provided~~ within the meaning  
4 given in 49 CFR ~~23.62~~ 26.5, unless successfully challenged as provided in 49 CFR  
5 ~~23.69~~ 26.89.

6           **SECTION 2307dg.** 84.076 (1) (b) (intro.) of the statutes is renumbered 84.076  
7 (1) (b) and is amended to read:

8           84.076 (1) (b) “Disadvantaged business” ~~means a sole proprietorship,~~  
9 ~~partnership, limited liability company, joint venture or corporation that fulfills all~~  
10 ~~of the following requirements, as certified by the department:~~ has the meaning given  
11 in s. 84.072 (1) (b).

12           **SECTION 2307dh.** 84.076 (1) (b) 1., 2. and 3. of the statutes are repealed.

13           **SECTION 2307dj.** 84.076 (3) (intro.) and (a) of the statutes are consolidated,  
14 renumbered 84.076 (3) and amended to read:

15           84.076 (3) BIDS, CONTRACTS. Section 84.06 (2) applies to bids and contracts  
16 under this section, except that the secretary shall reject low bids that do not satisfy  
17 the requirements under sub. (4). ~~The secretary shall establish a list of disadvantaged~~  
18 ~~businesses that are eligible to submit bids for contracts awarded under this section~~  
19 ~~and subcontractors who meet the requirements under sub. (4) (b).~~ Each bid  
20 submitted under this section shall include the agreement specified under sub. (4) and  
21 ~~all of the following conditions: (a) A, as a condition, a goal that at least 25% of the~~  
22 ~~total number of workers in all construction trades employed on the project will be~~  
23 ~~disadvantaged individuals.~~

24           **SECTION 2307dk.** 84.076 (3) (b) of the statutes is repealed.

25           **SECTION 2307dm.** 84.076 (4) (b) of the statutes is amended to read:

1           84.076 (4) (b) Obtain from a subcontractor that has experience in providing  
2 training to disadvantaged individuals a program of preapprenticeship training that  
3 satisfies the requirements established by the secretary under sub. (2) (b), and assure  
4 that the subcontractor has experience in providing a program of management and  
5 technical assistance to disadvantaged business contractors, and that the  
6 subcontractor's management and technical assistance program satisfies the  
7 requirements established by the secretary under sub. (2) (b) and includes all of the  
8 requirements of par. (a) 2. A subcontractor under this paragraph need not be a  
9 disadvantaged business, but if the subcontractor is not a disadvantaged business, it  
10 may not be included within the goal established under sub. (3) (b).”.

11           **2.** Page 1356, line 13: after that line insert:

12           “(2vx) UNIFIED DISADVANTAGED BUSINESS CERTIFICATION PROGRAM.

13           (a) No person may use the list of disadvantaged businesses established by the  
14 department of transportation under section 84.076 (3), 1999 stats., for bids first  
15 advertised after the last day of the 5th month beginning after the effective date of  
16 this paragraph.

17           (b) Notwithstanding section 84.072 of the statutes, as created by this act, no  
18 later than the first day of the 4th month beginning after the effective date of this  
19 paragraph, the department of transportation shall certify as a disadvantaged  
20 business under section 84.072 of the statutes, as created by this act, any business  
21 that, on the effective date of this paragraph, is certified by the department as a  
22 disadvantaged business for the purposes of section 84.076, 1999 stats.  
23 Notwithstanding section 84.072 of the statutes, as created by this act, the  
24 department of transportation is not required to review any documentation in

1 certifying under this paragraph a business as a disadvantaged business under  
2 section 84.072 of the statutes, as created by this act.”.

3 (END)