

1983 Senate Bill 650

Date of enactment: **May 1, 1984**
Date of publication: **May 9, 1984**

1983 Wisconsin Act 390

AN ACT *to repeal 16.75 (3m) (a) 2; to consolidate and renumber 16.75 (3m) (a) (intro.) and 1; to amend 16.75 (3m) (b) and 84.075 (3); and to create 16.75 (3m) (c) 5 and 560.036 of the statutes, relating to minority business certification and granting rule-making authority.*

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

- 1677 -

83 WisACT 390

SECTION 1. 16.75 (3m) (a) (intro.) and 1 of the statutes, as created by 1983 Wisconsin Act 27, are consolidated, renumbered 16.75 (3m) (a) and amended to read:

16.75 (3m) (a) In this subsection: ~~1. “Minority, “minority business” means a sole proprietorship, partnership, joint venture or corporation which is at least 51% owned by minority group members~~ business certified by the department of development under s. 560.036 (2).

SECTION 2. 16.75 (3m) (a) 2 of the statutes, as created by 1983 Wisconsin Act 27, is repealed.

SECTION 2m. 16.75 (3m) (b) of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

16.75 (3m) (b) The department shall attempt to ensure that 5% of the total amount expended under this subchapter in each fiscal year is paid to minority businesses. Except as provided under subs. (7) and (8), the department may purchase materials, supplies, equipment and contractual services from any minority business submitting a qualified responsible competitive bid that is no more than 5% higher than the apparent low bid or competitive proposal that is no more than 5% higher than the most advantageous offer, unless the department is required under sub. (3s) to award the order or contract to a sheltered workshop. In administering the preference for minority businesses established in this paragraph, the department shall maximize the use of minority businesses which are incorporated under ch. 180 or which have their principal place of business in this state.

SECTION 3. 16.75 (3m) (c) 5 of the statutes is created to read:

16.75 (3m) (c) 5. In determining whether a purchase complies with the goal established under par. (b) or s. 16.855 (10m) or 16.87 (2), the department shall include only amounts paid to minority businesses certified by the department of development under s. 560.036.

SECTION 4. 84.075 (3) of the statutes, as created by 1983 Wisconsin Act 27, is amended to read:

84.075 (3) The department shall at least semiannually, or more often if required by the department of administration, report to the department of administration the total amount of money it has paid to contractors, subcontractors and vendors which are minority businesses under ss. 84.01 (13), 84.06 and 84.07 and the number of contacts with minority businesses in connection with proposed purchases and contracts. In its reports, the department shall include only amounts paid to businesses certified by the department as minority businesses.

SECTION 5. 560.036 of the statutes is created to read:

560.036 Minority businesses. (1) DEFINITIONS. In this section:

(a) “American Indian” means a person who is enrolled as a member of a federally recognized American Indian tribe or band or who possesses documentation of at least one-fourth American Indian ancestry or documentation of tribal recognition as an American Indian.

(b) “Asian-Indian” means a person whose ancestors originated in India, Pakistan or Bangladesh.

(c) “Black” means a person whose ancestors originated in any of the black racial groups of Africa.

(d) “Hispanic” means a person of any race whose ancestors originated in Mexico, Puerto Rico, Cuba, Central America or South America or whose culture or origin is Spanish.

(e) 1. “Minority business” means a sole proprietorship, partnership, joint venture or corporation that fulfills both of the following requirements:

a. It is at least 51% owned, controlled and actively managed by a minority group member or members who are U.S. citizens or persons lawfully admitted to the United States for permanent residence, as defined under 8 USC 1101 (a) (20).

b. It is currently performing a useful business function.

2. This paragraph does not apply after June 30, 1987.

(em) 1. "Minority business" means a sole proprietorship, partnership, joint venture or corporation that fulfills all of the following requirements:

a. It is at least 51% owned, controlled and actively managed by a minority group member or members who are U.S. citizens or persons lawfully admitted to the United States for permanent residence, as defined under 8 USC 1101 (a) (20).

b. It is currently performing a useful business function.

c. Either it is incorporated under ch. 180 or its principal place of business is in this state.

2. This paragraph applies after June 30, 1987.

(f) "Minority group member" means any of the following:

1. A Black.

2. A Hispanic.

3. An American Indian.

4. An Eskimo.

5. An Aleut.

6. A native Hawaiian.

7. An Asian-Indian.

8. A person of Asian-Pacific origin.

(g) "Person of Asian-Pacific origin" means a person whose ancestors originated in Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific or the Northern Marianas.

(h) "Useful business function" means the provision of materials, supplies, equipment or services to customers in addition to this state. Acting as a conduit to transfer funds to a nonminority business does not constitute a useful business function, unless doing so is a normal industry practice.

(2) MINORITY BUSINESS CERTIFICATION. (a) For the purposes of ss. 16.75 (3m), 16.855 (10m) and 16.87 (2), the department shall establish and periodically update a list of certified minority businesses. Any business may apply to the department for certification.

(b) The department shall certify a business incorporated under ch. 180 or having its principal place of business in this state if the department, after conducting an investigation, determines that the business qualifies as a minority business under sub. (1) and any rules promulgated under sub. (3) (c). A determination that a business qualifies as a minority business may not be based on the number of minority group members employed by the business. This paragraph does not apply after June 30, 1987.

(bm) The department shall certify a business if the department, after conducting an investigation, determines that the business qualifies as a minority business under sub. (1) and any rules promulgated under sub. (3) (c). A determination that a business qualifies as a minority business may not be based on the number of minority group members employed by the business. This paragraph applies after June 30, 1987.

(c) The department may certify a business incorporated in this state or having its principal place of business in this state if the business is certified or otherwise classified as a minority business by an agency of this or another state or the federal government, or by a private business with expertise in certifying minority businesses if the private business

uses substantially the same procedures as those used by the department in making a determination under par. (b). This paragraph does not apply after June 30, 1987.

(cm) The department, without investigation, may certify a business if it is incorporated under ch. 180 or if its principal place of business is in this state and if the business is certified or otherwise classified as a minority business by an agency of this or another state or the federal government, or by a private business with expertise in certifying minority businesses if the private business uses substantially the same procedures as those used by the department in making a determination under par. (bm). This paragraph applies after June 30, 1987.

(d) 1. If the business applying for certification is not incorporated under ch. 180 or does not have its principal place of business in this state, the department may certify it if it meets a condition specified under par. (b) or (c) and if either of the following conditions exists:

a. The state in which the business is incorporated or has its principal place of business has a statutory minority business procurement program and the business qualifies for participation in that program under a procedure substantially equivalent to the procedure used by the department in making a determination under par. (b).

b. The department determines that, with respect to a specified type of supply, material, equipment or service, there are not enough certified minority business suppliers in this state to enable this state to achieve compliance with s. 16.75 (3m), 16.855 (10m) and 16.87 (2).

2. This paragraph does not apply after June 30, 1987.

(dm) The department may charge each business applying for certification under par. (d) a fee to cover the department's expenses in making the certification determination. This paragraph does not apply after June 30, 1987.

(e) If a business refuses to provide the department with sufficient information to enable it to conduct an investigation or if the business does not qualify for certification under par. (b), (c) or (d), the department shall deny the application. A business whose application is denied may, within 30 days after the date of the denial, appeal in writing to the secretary. The secretary shall enter his or her final decision within 30 days after receiving the appeal. This paragraph does not apply after June 30, 1987.

(em) If a business refuses to provide the department with sufficient information to enable it to conduct an investigation or if the business does not qualify for certification under par. (bm) or (cm), the department shall deny the application. A business whose application is denied may, within 30 days after the date of the denial, appeal in writing to the secretary. The secretary shall enter his or her final decision within 30 days after receiving the appeal. This paragraph applies after June 30, 1987.

(f) The department may, at the request of any state agency, or at its own discretion, examine any certified business to verify that it qualifies for certification. The business shall provide the department with any records or information necessary to complete the examination. If the business fails to comply with a reasonable request for records or information, the department shall decertify it.

(g) If the department, after an examination under par. (f), determines that a business does not qualify as a minority business, the department shall notify the business and the departments of administration and transportation that it intends to decertify the business. The business may, within 30 days after the notice is sent, appeal in writing to the secretary of development. The secretary shall enter his or her final decision within 30 days after receiving the appeal. If the secretary confirms the decision of the department, the department shall immediately decertify the business. A decertified business may, within 30 days after the secretary's decision, request a contested case hearing under s. 227.064 from the department of development. If the final administrative or judicial pro-

ceeding results in a determination that the business qualifies as a minority business, the department shall immediately certify the business.

(3) **DEPARTMENT RULE MAKING.** (a) The department shall promulgate rules establishing procedures to implement sub. (2).

(b) The department may promulgate rules further defining sub. (1) (f) 1 to 8.

(c) The department may promulgate rules establishing conditions with which a business must comply to qualify for certification, in addition to the qualifications specified under sub. (1) (e).

(4) **CERTIFIED BUSINESSES REPORT.** The department shall, by January 1, 1987, submit to the presiding officer of each house of the legislature a report listing all businesses certified under sub. (2) (d) which were awarded contracts or from which purchases were made in compliance with the preference established under s. 16.75 (3m) (b). The report shall include a description of all other business activity conducted by those businesses in this state. The report shall cover the period beginning with the effective date of this subsection (1983). This subsection does not apply after January 1, 1987.

SECTION 6. Cross-reference changes. In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

(1) **MINORITY BUSINESS.**

A	B	C
Statute Sections	Old Cross-References	New Cross-References
16.855 (10m)(a), as created by 1983 Wis. Act 27	16.75 (3m)(a) 1	16.75 (3m)(a)
16.87 (2), as created by 1983 Wis. Act 27	16.75 (3m)(a) 1	16.75 (3m)(a)
84.075 (1), as created by 1983 Wis. Act 27	16.75 (3m)(a) 1	560.036 (1)(e) 1

(2) **MINORITY BUSINESS SUNSET.**

A	B	C
Statute Sections	Old Cross-References	New Cross-References
84.075 (1), as affected by 1983 Wis. Acts 27 and (this act)	560.036 (1)(e) 1	560.036 (1)(em) 1

SECTION 7. Effective dates. (1) Except as provided in subsection (2), this act takes effect on the day following publication.

(2) The treatment of section 84.075 (1) of the statutes (by SECTION 6 (2)) takes effect on July 1, 1987.
