# CHAPTER 16

# DEPARTMENT OF ADMINISTRATION

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## SUBCHAPTER I

## GENERAL ADMINISTRATION

**16.001 Organization of department. (1)** PURPOSES. The purposes of this chapter are to conserve the state's resources by coordinating management services and providing effective aid to agencies of the state government; to present clearly defined alternatives and objectives of state programs and policies so that the state's agencies, the governor and the legislature may plan cooperatively and finance the services which the state will provide for its citizens; to help the state's agencies furnish the agreed upon services as efficiently and effectively as possible, avoiding any duplication of effort or waste of money; to assure the legislature and the governor that the services are being provided to the public at the agreed upon quantity, quality and cost; and to anticipate and resolve administrative and financial problems faced by the agencies, governor and legislature of the state.

**(2)** LIBERAL CONSTRUCTION OF STATUTES. Statutes applicable to the department of administration shall be construed liberally in aid of the purposes declared in sub. (1).

**16.002 Definitions.** In this chapter:

**(1)** "Department" means the department of administration.

**(2)** "Departments" means constitutional offices, departments, and independent agencies and includes all societies, associations, and other agencies of state government for which appropriations are made by law, but not including authorities created in subch. II of ch. 114 or in ch. 231, 232, 233, 234, 237, 238, or 279.

**(3)** "Position" means a group of duties and responsibilities in either the classified or the unclassified divisions of the civil service, which require the services of an employee on a part−time or full−time basis.

**(4)** "Secretary" means the secretary of administration.

**History:** 1977 c. 196; 1983 a. 27, 189; 2001 a. 16; 2005 a. 74, 335; 2007 a. 20, 97; 2009 a. 28; 2011 a. 7, 10, 229; 2013 a. 20, 165.

**16.003 Department of administration. (1)** PURPOSE. The department shall carry out the purposes of this chapter by improving the techniques used for such management specialties, not limited by enumeration, as budgeting, accounting, engineering, purchasing, records management and fleet management; by coordinating and providing services which are used by more than one agency, and by reviewing agencies' programs and management to identify problems and suggest improvements.

**(2)** STAFF. Except as provided in ss. 16.548, 978.03 (1), (1m) and (2), 978.04 and 978.05 (8) (b), the secretary shall appoint the staff necessary for performing the duties of the department. All staff shall be appointed under the classified service except as otherwise provided by law.

**History:** 1971 c. 270; 1977 c. 196; 1979 c. 34; 1983 a. 27; 1989 a. 31, 117; 1991 a. 39; 2015 a. 55.

**16.004 Secretary, powers and duties. (1)** RULES. The secretary shall promulgate rules for administering the department and performing the duties assigned to it.

**(2)** INFORMATION; REPORTS; RECOMMENDATIONS. The secretary shall furnish all information requested by the governor or by any member of the legislature.

**(3)** INVESTIGATIONS AND HEARINGS. (a) The department, when directed by the governor, shall investigate any irregularities, and all phases of operating cost and functions, of executive or administrative agencies so as to determine the feasibility of consolidating, creating or rearranging agencies for the purpose of effecting the elimination of unnecessary state functions, avoiding duplication, reducing the cost of administration and increasing efficiency.

(b) The secretary may hold either public or private hearings to inform the secretary of any matters relating to the secretary's functions and for that purpose shall be clothed with the powers relating to witnesses given by s. 885.01 (4) and s. 885.12 shall apply.

**(4)** FREEDOM OF ACCESS. The secretary and such employees of the department as the secretary designates may enter into the offices of state agencies and authorities created under subch. II of ch. 114 and under chs. 231, 233, 234, 237, 238, and 279, and may examine their books and accounts and any other matter that in the secretary's judgment should be examined and may interrogate the agency's employees publicly or privately relative thereto.

**(5)** AGENCIES AND EMPLOYEES TO COOPERATE. All state agencies and authorities created under subch. II of ch. 114 and under chs. 231, 233, 234, 237, 238, and 279, and their officers and employees, shall cooperate with the secretary and shall comply with every request of the secretary relating to his or her functions.

**(6)** MANAGEMENT AUDITS. The secretary shall periodically make management audits of agencies, utilizing teams of specialists in the fields of purchasing, personnel, accounting, budgeting, space utilization, forms design and control, records management, and any other specialties necessary to effectively appraise all management practices, operating procedures and organizational structures.

**(7)** PERSONNEL MANAGEMENT INFORMATION SYSTEM. (a) The secretary shall establish and maintain a personnel management information system which shall be used to furnish the governor, the legislature and the division of personnel management in the department with current information pertaining to authorized positions, payroll and related items for all civil service employees, except employees of the office of the governor, the courts and judicial branch agencies, and the legislature and legislative service agencies. It is the intent of the legislature that the University of Wisconsin System provide position and other information to the department and the legislature, which includes appropriate data on each position, facilitates accountability for each authorized position and traces each position over time. Nothing in this paragraph may be interpreted as limiting the authority of the board of regents of the University of Wisconsin System to allocate and reallocate positions by funding source within the legally authorized levels.

(b) When requested by the joint committee on finance, the secretary shall report to the committee on the compliance of each agency in the executive branch in providing the data necessary for operation of the personnel management information system.

**(8)** STATE–OWNED HOUSING RENTALS. (a) In this subsection, "agency" has the meaning given in s. 16.52 (7).

(am) The secretary shall maintain a system of rental policies for state−owned housing administered by all agencies and shall periodically review the system for possible changes. Whenever the secretary proposes to change rental policies other than rental rates, the secretary shall submit a report relating to the system to the joint committee on finance. The report shall include any changes in rental policies recommended by the secretary.

(b) The joint committee on finance, following its review, may approve or disapprove rental policies submitted under par. (am). Any changes in rental policies shall be effective upon approval or at such time following approval as may be specified in the secretary's submittal.

(c) Notwithstanding par. (b), if the cochairpersons of the joint committee on finance do not notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the recommended changes in rental policies contained in the report submitted under par. (am) within 14 working days after the date of the secretary's submittal, the secretary may implement any recommended changes in rental policies contained in the report. If, within 14 working days after the date of the secretary's submittal, the cochairpersons of the committee notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the recommended changes in rental policies contained in the report, the secretary may implement the recommended changes only with the approval of the committee.

(d) The system established under par. (am) shall include a procedure for review of the need to retain state−owned housing units and possible disposition of such units. The secretary shall submit recommendations regarding the disposition of any housing units to the building commission.

(e) 1. In this paragraph, "consumer price index" means the average of the consumer price index over each 12−month period, all items, U.S. city average, as determined by the bureau of labor statistics of the U.S. department of labor.

2. No later than July 1 of the 2nd year following each federal decennial census, the secretary shall obtain appraisals of the fair market value of all state−owned housing rental units administered by agencies. The secretary shall determine and fix rental rates for such units based on the appraisals, which shall take effect on the following August 15.

3. If the secretary determines that a state−owned housing rental unit has been affected by a major renovation, the secretary may order a reappraisal of the fair market value of the unit. Whenever a reappraisal of the fair market value of a unit is obtained, the secretary shall determine and fix a new rental rate for that unit based on the reappraisal. If the reappraisal is obtained prior to July 1 of any year, the rate shall take effect on August 15 of that year; otherwise it shall take effect on August 15 of the following year.

4. If no appraisal of a state−owned housing rental unit is made during the 24−month period ending on July 1 of any even−numbered year, the current rental rate for the unit shall be subject to a biennial cost−of−living adjustment. To determine the adjustment, the secretary shall calculate the percentage difference between the consumer price index for the 12−month period ending on December 31 of the preceding year and the consumer price index for the base period, calendar year 1991. The secretary shall increase the rental rate by that percentage, rounded to the nearest whole dollar, which amount shall take effect on August 15.

5. The secretary shall charge the cost of the appraisal of each state−owned housing rental unit to the appropriation specified in s. 16.40 (19) or, if there is no such appropriation, to the appropriation or appropriations which fund the program in connection with which the housing is utilized.

**(9)** AGREEMENTS TO MAINTAIN AN ACCOUNTING FOR OPERATING NOTES. The secretary may enter into agreements to maintain an accounting of, forecast and administer those moneys that are in the process of collection by the state and that are pledged for the repayment of operating notes issued under subch. III of ch. 18, in accordance with resolutions of the building commission authorizing the issuance of the operating notes.

**(10)** RECYCLING PROPOSAL. The secretary shall develop a proposal for funding recycling in this state. That proposal shall distribute the burden of funding so that the portion paid by business, industry and citizens reflects their contribution to the waste stream. The secretary shall submit its proposal to the joint committee on finance on or before January 31, 1991.

**(11)** RISK MANAGEMENT PROGRAM SUPPLEMENTATION. Prior to transferring moneys from the appropriation under s. 20.505 (2) (a) to the appropriation under s. 20.505 (2) (k), the secretary shall notify in writing the cochairpersons of the joint committee on finance of his or her proposed action.

**(12)** RULES ON SURVEILLANCE OF STATE EMPLOYEES. (a) In this subsection, "state agency" means an association, authority, board, department, commission, independent agency, institution, office, society, or other body in state government created or authorized to be created by the constitution or any law, including the legislature, the office of the governor, and the courts, but excluding the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, and the Fox River Navigational System Authority.

(b) The department shall promulgate rules that apply to all state agencies governing surveillance by a state agency of the state agency's employees.

**(15)** LEGAL SERVICES. (a) In this subsection, "state agency" means any office, department, or independent agency in the executive branch of state government.

(b) 1. At its own discretion, the department may provide legal services to any state agency that has a secretary who serves at the pleasure of the governor and shall assess the state agency for legal services provided by the division of legal services.

2. At the request of any state agency that does not have a secretary who serves at the pleasure of the governor, the department may provide legal services to the state agency and shall assess the state agency for legal services provided by the division of legal services.

3. The department shall credit all moneys received from state agencies under this paragraph to the appropriation account under s. 20.505 (1) (kr).

(bm) In the report submitted under s. 16.705 (8), the department shall document the division's success in reducing the state's use of contracted employees.

**(17)** BUSINESS INTELLIGENCE AND DATA WAREHOUSING SYSTEM. The department may implement an enterprise−wide reporting,

data warehousing, and data analysis system applicable to every agency, as defined in s. 16.70 (1e), other than the legislative and judicial branches of state government.

**(18)** INTERGOVERNMENTAL AFFAIRS OFFICES. The secretary may maintain intergovernmental affairs offices to conduct public outreach and promote coordination between agencies, as defined in s. 16.70 (1e), and authorities, as defined in s. 16.70 (2).

**(21)** PAYMENT TO LOCAL EXPOSITION DISTRICT. (a) Annually, as grants, the secretary shall remit the amounts appropriated under s. 20.855 (4) (cr) and (dr) to a local exposition district created under subch. II of ch. 229 to assist in the development and construction of sports and entertainment arena facilities, as defined in s. 229.41 (11g). The secretary may not remit moneys under this subsection until the secretary has determined that the sponsoring municipality has provided at least $47,000,000 for the development and construction of sports and entertainment arena facilities and the local exposition district has issued debt to fund the development and construction of sports and entertainment arena facilities. The secretary may not remit from the appropriation account under s. 20.855 (4) (dr) to a local exposition district more than a cumulative total of $80,000,000.

(b) The legislature finds and determines that sports and entertainment arena facilities, as defined in s. 229.41 (11g), encourage economic development and tourism in this state, reduce unemployment in this state, preserve business activities within this state, and bring needed capital into this state for the benefit and welfare of people throughout the state. It is therefore in the public interest and will serve a public purpose, and it is the public policy of this state, to assist a local exposition district in the development and construction of sports and entertainment arena facilities under subch. II of ch. 229.

**NOTE: Sub. (21) is repealed eff. 6−30−36 by 2015 Wis. Act 60.**

**(22)** PAYMENT TO BRADLEY CENTER SPORTS AND ENTERTAINMENT CORPORATION. During the 2015−17 fiscal biennium, from the appropriation under s. 20.855 (4) (cy), the secretary may make one or more grants to the Bradley Center Sports and Entertainment Corporation, created under ch. 232, for the purpose of assisting the corporation in retiring its obligations and any contractual liabilities.

**NOTE: Sub. (22) is repealed eff. 6−30−17 by 2015 Wis. Act 60.**

**History:** 1971 c. 270; 1973 c. 333; 1975 c. 39 s. 732 (1); 1975 c. 224; 1977 c. 196 ss. 21, 130 (3); 1977 c. 272; 1979 c. 34, 221, 357; 1981 c. 20 ss. 3v, 55d, 55m; 1983 a. 27 ss. 58, 2202 (49) (a); 1983 a. 524; 1985 a. 29; 1985 a. 332 s. 251 (3); 1987 a. 27; 1989 a. 335; 1991 a. 39, 316; 1993 a. 496; 1995 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33 ss. 140 to 141f, 9160; 2005 a. 25, 74, 335; 2007 a. 20, 97; 2009 a. 28; 2011 a. 7, 10; 2013 a. 20; 2015 a. 55, 60.

**Cross−reference:** See also Adm, Wis. adm. code.

**16.005 Bradley Center Sports and Entertainment Corporation.** This chapter does not apply to the Bradley Center Sports and Entertainment Corporation except where expressly otherwise provided.

**History:** 1985 a. 26; 1991 a. 39.

**16.006 Treatment of classified employees.** Those individuals holding positions in the classified service in the department who are engaged in legislative text processing functions and who achieved permanent status in class on August 9, 1989, shall retain, while serving in the unclassified service in the legislature or any legislative branch agency, those protections afforded employees in the classified service under ss. 230.34 (1) (a) and 230.44 (1) (c) relating to demotion, suspension, discharge, layoff, or reduction in base pay except that the applicability of any reduction in base pay of such an employee shall be determined on the basis of the base pay received by the employee on August 9, 1989, plus the total amount of any subsequent general economic increases provided in the compensation plan under s. 230.12 for nonrepresented employees in the classified service. Such employees shall also have reinstatement privileges to the classified service as provided under s. 230.33 (1). Employees of the department holding positions in the classified service on August 9, 1989, who are engaged in legislative text processing functions and who have not achieved permanent status in class in any position in the department on that date are eligible to receive the protections and privileges preserved under this section if they successfully complete service equivalent to the probationary period required in the classified service for the positions which they hold.

**History:** 1989 a. 31; 1997 a. 27; 2001 a. 16 s. 373; Stats. 2001 s. 16.006.

**16.007 Claims board. (1)** PURPOSE. The claims board shall receive, investigate and make recommendations on all claims of $10 or more presented against the state which are referred to the board by the department. No claim or bill relating to such a claim shall be considered by the legislature until a recommendation thereon has been made by the claims board.

**(2)** RULES. Except as provided in s. 901.05, the board shall not be bound by common law or statutory rules of evidence, but shall admit all testimony having reasonable probative value, excluding that which is immaterial, irrelevant or unduly repetitious. The board may take official notice of any generally recognized fact or established technical or scientific fact, but parties shall be notified either before or during hearing or by full reference in preliminary reports, or otherwise, of the facts so noticed, and the parties shall be afforded an opportunity to contest the validity of the official notice.

**(3)** PROCEDURE. When a claim has been referred to the claims board, the board may upon its own motion and shall upon request of the claimant, schedule such claim for hearing, giving the claimant at least 10 days' written notice of the date, time and place thereof. Those claims described under sub. (6) (b) shall not be heard or decided by the claims board. The board shall keep a record of its proceedings, but such proceedings may be recorded by a permanent recording device without transcription. It may require sworn testimony and may summon and compel attendance of witnesses and the production of documents and records. Any member of the board may sign and issue a subpoena.

**(4)** AGENCIES TO COOPERATE. The several agencies shall cooperate with the board and shall make their personnel and records available upon request when such request is not inconsistent with other statutes.

**(5)** FINDINGS. The board shall report its findings and recommendations, on all claims referred to it, to the legislature. Except as provided in sub. (6), if from its findings of fact the board concludes that any such claim is one on which the state is legally liable, or one which involves the causal negligence of any officer, agent or employee of the state, or one which on equitable principles the state should in good conscience assume and pay, it shall cause a bill to be drafted covering its recommendations and shall report its findings and conclusions and submit the drafted bill to the joint committee on finance at the earliest available time. If the claims board determines to pay or recommends that a claim be paid from a specific appropriation or appropriations, it shall include that determination or recommendation in its conclusions. A copy of its findings and conclusions shall be submitted to the claimant within 20 days after the board makes its determination. Findings and conclusions are not required for claims processed under sub. (6) (b).

**(6)** SETTLEMENT. (a) Except as provided in par. (b), whenever the claims board by unanimous vote finds that payment to a claimant of not more than the amount specified in s. 799.01 (1) (d) is justified, it may order the amount that it finds justified to be paid on its own motion without submission of the claim in bill form to the legislature. The claim shall be paid on a voucher upon the certification of the chairperson and secretary of the board, and shall be charged as provided in sub. (6m).

(b) Whenever the representative of the department designated by the secretary pursuant to s. 15.105 (2) finds that payment of a claim described in this paragraph to a claimant is justified, the representative of the department may order the amount so found to be justified paid without approval of the claims board and without submission of the claim in the form of a bill to the legislature. Such claims shall be paid on vouchers upon the certification of the

representative of the department, and shall be charged as provided in sub. (6m). The representative of the department shall annually report to the board all claims paid under this paragraph. Claims which may be paid directly by the department are:

1. Payment of the amount owed by the state under any check, share draft or other draft issued by it which has been voided for failure to present the check, share draft or other draft for payment within the prescribed period from the date of issuance.

3. Payment of a refund due as the result of an overpayment made by mistake of the applicant in filing articles of incorporation or amendments thereto, or a certificate of authority for a foreign corporation to transact business in this state pursuant to s. 180.0122.

4. Payment of any claim of less than $10.

**(6m)** PAYMENT CHARGES. The claims board, for claims authorized to be paid under sub. (6) (a), or the representative of the department, for claims authorized to be paid under sub. (6) (b), may specify that a claim shall be paid from a specific appropriation or appropriations. If a claim requires legislative action, the board may recommend that the claim be paid from a specific appropriation or appropriations. If no determination is made as to the appropriation or appropriations from which a claim shall be paid, the claim shall be paid from the appropriation under s. 20.505 (4) (d).

**(7)** EXCEPTION. This section shall not be construed as relieving any 3rd−party liability or releasing any joint tort−feasor.

**(8)** EXPENSES. The board may pay the actual and necessary expenses of employees of the department of justice or the department of administration authorized by the board to secure material information necessary to the disposition of a claim.

**History:** 1975 c. 397; 1977 c. 196 s. 130 (3); 1979 c. 34 s. 2102 (1) (c); 1981 c. 20; 1983 a. 368; 1985 a. 29; 1987 a. 27, 142; 1989 a. 31, 303; 1991 a. 269; 2003 a. 138; 2005 a. 253.

Upon completion of arbitration involving the state, any claim resulting from the award must be submitted to the claims board for processing. State v. P.G. Miron Const. Co. Inc. 181 Wis. 2d 1045, 512 N.W.2d 499 (1994).

**16.008 Payment of special charges for extraordinary police service to state facilities. (1)** In this section "extraordinary police services" means those police services which are in addition to those being maintained for normal police service functions by a municipality or county and are required because of an assemblage or activity which is or threatens to become a riot, civil disturbance or other similar circumstance, or in which mob violence occurs or is threatened.

**(2)** The state shall pay for extraordinary police services provided directly to state facilities, as defined in s. 70.119 (3) (e), in response to a request of a state officer or agency responsible for the operation and preservation of such facilities. The University of Wisconsin Hospitals and Clinics Authority shall pay for extraordinary police services provided to facilities of the authority described in s. 70.11 (38). The Fox River Navigational System Authority shall pay for extraordinary police services provided to the navigational system, as defined in s. 237.01 (5). Municipalities or counties that provide extraordinary police services to state facilities may submit claims to the claims board for actual additional costs related to wage and disability payments, pensions and worker's compensation payments, damage to equipment and clothing, replacement of expendable supplies, medical and transportation expense, and other necessary expenses. The clerk of the municipality or county submitting a claim shall also transmit an itemized statement of charges and a statement that identifies the facility served and the person who requested the services. The board shall obtain a review of the claim and recommendations from the agency responsible for the facility prior to proceeding under s. 16.007 (3), (5), and (6).

**History:** 1977 c. 418; 1995 a. 27; 2001 a. 16, 104.

**16.009 Board on aging and long−term care. (1)** In this section:

(a) "Beneficiary" means an individual who is eligible for coverage.

(ag) "Board" means the board on aging and long−term care.

(ar) "Client" means an individual who requests services of the office, or a resident on whose behalf a request is made.

(b) "Homestead credit program" means the program under ss. 71.51 to 71.55.

(c) "Household" has the meaning given in s. 71.52 (4).

(d) "Household income" has the meaning given in s. 71.52 (5).

(e) "Income" has the meaning given in s. 71.52 (6).

(em) "Long−term care facility" includes any of the following:

1. A nursing home, as defined in s. 50.01 (3).

2. A community−based residential facility, as defined in s. 50.01 (1g).

3. A facility, as defined in s. 647.01 (4).

4. A swing bed in an acute care facility or extended care facility, as specified under 42 USC 1395tt.

5. A hospice, as defined in s. 50.90 (1) (c).

6. An adult family home, as defined in s. 50.01 (1).

7. A residential care apartment complex, as defined in s. 50.01 (6d).

(f) "Long−term care insurance" means insurance that provides coverage both for an extended stay in a nursing home and home health services for a person with a chronic condition. The insurance may also provide coverage for other services that assist the insured person in living outside a nursing home, including but not limited to adult day care and continuing care retirement communities.

(gm) "Office" means the office of the long−term care ombudsman.

(gr) "Ombudsman" means the long−term care ombudsman, as specified in sub. (4) (a).

(h) "Physician" has the meaning given in s. 448.01 (5).

(i) "Program" means the long−term care ombudsman program.

(j) "Resident" means a person cared for or treated in a long−term care facility.

**(2)** The board shall:

(a) Appoint an executive director within the classified service who shall employ staff within the classified service.

(b) Implement a long−term care ombudsman program, to do all of the following:

1. Investigate complaints from any person concerning improper conditions or treatment of aged or disabled persons who receive long−term care or concerning noncompliance with or improper administration of federal statutes or regulations or state statutes or rules related to long−term care for the aged or disabled.

2. Serve as mediator or advocate to resolve any problem or dispute relating to long−term care for the aged or disabled.

(d) Promote public education, planning and voluntary acts to resolve problems and improve conditions involving long−term care for the aged or disabled.

(e) Monitor the development and implementation of federal, state and local laws, regulations, rules, ordinances and policies that relate to long−term care facilities for the aged or disabled.

(em) Monitor, evaluate and make recommendations concerning long−term community support services received by clients of the long−term support community options program under s. 46.27.

(f) As a result of information received while investigating complaints and resolving problems or disputes, publish material that assesses existing inadequacies in federal and state laws, regulations and rules concerning long−term care for the aged or disabled. The board shall initiate legislation as a means of correcting these inadequacies.

(g) Stimulate resident, client and provider participation in the development of programs and procedures involving resident rights and facility responsibilities, by establishing resident councils and by other means.

(h) Conduct statewide hearings on issues of concern to aged or disabled persons who are receiving or who may receive long−term care.

(i) Report annually to the governor and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3). The report shall set forth the scope of the programs for providing long−term care for the aged or disabled developed in the state, findings regarding the state's activities in the field of long−term care for the aged and disabled, recommendations for a more effective and efficient total program and the actions taken by the agencies of the state to carry out the board's recommendations.

(j) Provide information and counseling to consumers regarding insurance policies available to supplement federal medicare insurance coverage, including long−term care insurance, and the eligibility requirements for medical assistance under s. 49.46 (1), 49.468 or 49.47 (4). To implement this responsibility, the board shall provide training, educational materials and technical assistance to volunteer organizations and private businesses willing and able to provide insurance and medical assistance eligibility information and counseling, in order that these organizations and businesses may provide the information and counseling to consumers.

(p) Employ staff within the classified service or contract with one or more organizations to provide advocacy services to potential or actual recipients of the family care benefit, as defined in s. 46.2805 (4), or their families or guardians. The board and contract organizations under this paragraph shall assist these persons in protecting their rights under all applicable federal statutes and regulations and state statutes and rules. An organization with which the board contracts for these services may not be a provider, nor an affiliate of a provider, of long−term care services, a resource center under s. 46.283 or a care management organization under s. 46.284. For potential or actual recipients of the family care benefit, advocacy services required under this paragraph shall include all of the following:

1. Providing information, technical assistance and training about how to obtain needed services or support items.

2. Providing advice and assistance in preparing and filing complaints, grievances and appeals of complaints or grievances.

3. Providing negotiation and mediation.

4. Providing individual case advocacy assistance regarding the appropriate interpretation of statutes, rules or regulations.

5. Providing individual case advocacy services in administrative hearings and legal representation for judicial proceedings regarding family care services or benefits.

**(3)** The board may:

(a) Contract with any state agency to carry out the board's activities.

(bm) Employ an attorney for provision of legal services in accordance with requirements of the long−term care ombudsman program under 42 USC 3027 (a) (12) and 42 USC 3058g (g).

**(4)** (a) The board shall operate the office in order to carry out the requirements of the long−term care ombudsman program under 42 USC 3027 (a) (12) (A) and 42 USC 3058f to 3058h. The executive director of the board shall serve as ombudsman under the office. The executive director of the board may delegate operation of the office to the staff employed under sub. (2) (a), as designated representatives of the ombudsman.

(b) The ombudsman or his or her designated representative may have the following access to clients, residents and long−term care facilities:

1. The ombudsman or designated representative may:

a. At any time without notice, enter, and have immediate access to a client or resident in, a long−term care facility.

b. Communicate in private, without restriction, with a client or resident.

c. Except as provided in subd. 1. d., have access to and review records that pertain to the care of the resident if the resident or his or her guardian has consented or if the resident has no guardian and is unable to consent.

d. With the consent of a resident or his or her legal counsel, have access to and review records that pertain to the care of the resident, as specified in s. 49.498 (5) (e).

e. Have access to and review records of a long−term care facility as necessary to investigate a complaint if the resident's guardian refuses to consent; if the ombudsman or designated representative has reason to believe that the guardian is not acting in the best interests of the resident; and, for investigation only by a designated representative, if the designated representative obtains the approval of the ombudsman.

f. Have access to those administrative records, policies and documents of a long−term care facility to which the resident or public has access.

g. Have access to and, on request, be furnished copies of all licensing or certification records maintained by the department of health services with respect to regulation of a long−term care facility.

2. The ombudsman shall receive, upon request to a long−term care facility, the name, address and telephone number of the guardian, legal counsel or immediate family member of any resident.

(d) A long−term care facility or personnel of a long−term care facility that disclose information as authorized under this subsection are not liable for that disclosure.

(e) Information of the office relating to a client, complaints or investigations under the program may be disclosed only at the discretion of the ombudsman or his or her designated representative. The identity of a client or named witness or of a resident who is not a client may be revealed under this paragraph only if one of the following conditions is met:

1. Under written authorization by the client, witness or resident or his or her guardian, if any.

2. Under the lawful order of a court of competent jurisdiction.

**(5)** (a) No person may do any of the following:

1. Discharge or otherwise retaliate or discriminate against any person for contacting, providing information to or otherwise cooperating with any representative of the board.

2. Discharge or otherwise retaliate or discriminate against any person on whose behalf another person has contacted, provided information to or otherwise cooperated with any representative of the board.

(b) Any person who violates par. (a) may be fined not more than $1,000 or imprisoned for not more than 6 months or both.

(d) Any employee who is discharged or otherwise retaliated or discriminated against in violation of par. (a) may file a complaint with the department of workforce development under s. 106.54 (5).

(e) Any person not described in par. (d) who is retaliated or discriminated against in violation of par. (a) may commence an action in circuit court for damages incurred as a result of the violation.

**History:** 1981 c. 20; 1983 a. 524; 1985 a. 29; 1987 a. 27; 1989 a. 31, 294; 1991 a. 39, 232; 1993 a. 16, 205; 1995 a. 27 s. 9126 (19); 1997 a. 131; 1999 a. 9, 82, 86, 186; 2003 a. 33; 2007 a. 20 ss. 74, 9121 (6) (a); 2009 a. 28; 2011 a. 32; 2013 a. 165 s. 114.

**16.01 Women's council. (1)** In this section, "agency" means any office, department, agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law which is entitled to expend moneys appropriated by law, including the legislature and the courts, and any authority created under subch. II of ch. 114 or ch. 231, 233 or 234.

**(2)** The women's council shall:

(a) Identify the barriers that prevent women in this state from participating fully and equally in all aspects of life.

(b) Conduct statewide hearings on issues of concern to women.

(c) Review, monitor and advise all state agencies regarding the impact upon women of current and emerging state policies, procedures, practices, laws and administrative rules.

(d) Work closely with all state agencies, including the University of Wisconsin System and the technical college system, with the private sector and with groups concerned with women's issues to develop long−term solutions to women's economic and social inequality in this state.

(e) Recommend changes to the public and private sectors and initiate legislation to further women's economic and social equality and improve this state's tax base and economy.

(f) Disseminate information on the status of women in this state.

(g) Submit a biennial report on the women's council's activities to the governor and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3).

**(3)** All state agencies, including the University of Wisconsin System and the technical college system, shall fully cooperate with and assist the women's council. To that end, a representative of a state agency shall, upon request by the women's council:

(a) Provide information on program policies, procedures, practices and services affecting women.

(b) Present recommendations to the women's council.

(c) Attend meetings and provide staff assistance needed by the women's council.

(d) Inform the agency's appointing authority of issues concerning the women's council.

**History:** 1983 a. 27; 1987 a. 27, 186, 399; 1989 a. 31; 1993 a. 399; 1995 a. 27; 2005 a. 335.

**16.04 Fleet management and maintenance. (1)** The department shall ensure optimum efficiency and economy in the fleet management and maintenance activities of all agencies as defined in s. 16.52 (7). The department may:

(a) Develop uniform state policies and guidelines for vehicle and aircraft acquisition, use, maintenance, recording of operational and other costs, performance evaluation and replacement of vehicles and aircraft. The department shall incorporate the fuel usage policies under s. 16.045 (4m) in any policies or guidelines developed under this paragraph.

(am) Establish guidelines for the use by agencies of charter air travel or travel by private aircraft.

(b) Screen all requests for additional or replacement vehicle or aircraft acquisitions prior to forwarding the requests to the governor in accordance with s. 20.915 (1).

(c) Maintain a current inventory of all state−owned or leased motor vehicles and aircraft.

**(1e)** Subsection (1) does not preclude the Board of Regents of the University of Wisconsin System from accepting a gift of a motor vehicle.

**(1m)** When requested by the governor or the joint committee on finance, the department shall submit a report to the governor and the joint committee on finance on the details of all costs associated with fleet operations, based upon a statewide uniform cost accounting system.

**(2)** Each agency which is authorized by the department may operate a vehicle or aircraft fleet. Each such agency shall assign a fleet manager who shall operate the agency's fleet in accordance with policies, guidelines and rules adopted by the department to implement this section.

**(3)** Each fleet manager shall review the use of state−owned or leased vehicles or aircraft within his or her agency at least semi-annually to determine whether usage criteria are being met. The department shall periodically audit the agencies' records relating to fleet operations and the use of state−owned or leased vehicles or aircraft.

**(4)** The department shall provide central scheduling and dispatching of all air transportation on state−owned aircraft.

**(5)** The department shall develop operational policies for all state employees who act as pilots−in−command of any state−owned aircraft, including, but not limited to, crew rest requirements, current flight training, flight checks and flight physical examinations.

**History:** 1979 c. 34; 1983 a. 524; 1987 a. 27; 2009 a. 401; 2011 a. 32.

**16.045 Gasohol, alternative fuels, and hybrid−electric vehicles. (1)** In this section:

(a) "Agency" means an office, department, independent agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, that is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority created in subch. II of ch. 114 or in ch. 231, 232, 233, 234, 237, 238, or 279.

(b) "Alternative fuel" means any of the following fuels the use of which the department of natural resources finds would improve air quality as compared to the use of gasoline or petroleum−based diesel fuel:

1. Biodiesel fuel.
2. Methanol.
3. Ethanol.
4. Natural gas.
5. Propane.
6. Hydrogen.
7. Coal−derived liquid.
8. Electricity.
8m. Solar energy.
9. Fuel derived from biological material.
10. Any other fuel except gasohol that the department of natural resources finds to be composed substantially of material other than petroleum, the use of which would yield substantial environmental benefits.

(c) "Biodiesel fuel" means a fuel that is comprised of monoalkyl esters of long chain fatty acids derived from vegetable oils or animal fats, either in pure form or mixed in any combination with petroleum−based diesel fuel.

(cm) "Flex fuel vehicle" means a vehicle designed to operate on gasoline, a blend of a fuel marketed as gasoline and 85 percent ethanol or a higher percentage of ethanol, or a mixture of gasoline and that blend.

(d) "Gasohol" means any motor fuel containing at least 10 percent alcohol the use of which the department of natural resources finds would improve air quality as compared to the use of gasoline or petroleum−based diesel fuel.

(e) "Hybrid−electric vehicle" means a vehicle that has a chemically fueled internal combustion engine which is capable of operating on gasoline, one or more alternative fuels, or diesel fuel, or by means of a gas turbine, and is also equipped with an electric motor and an energy storage device.

**(2)** The department shall, whenever feasible and cost−effective, encourage agencies to store no motor fuel except gasohol or alternative fuel in facilities maintained by the agencies for the storage of fuel for and the refueling of state−owned or state−leased vehicles. This subsection does not authorize construction or operation of such facilities.

**(3)** The department shall, by the most economical means feasible, place a copy of the current list of gasohol and alternative fuel refueling facilities received from the department of agriculture, trade and consumer protection under s. 100.265 in each state−leased motor vehicle that is stored on state property for more than

7 days and in each state−owned motor vehicle. The department shall also make reasonable efforts to inform state officers and employees whose responsibilities make them likely to be using motor vehicles in connection with state business of the existence and contents of the list maintained under s. 100.265 and of any revisions thereto. The department may distribute the list or information relating to the list with salary payments or expense reimbursements to state officers and employees.

**(4)** The department shall, whenever feasible and cost−effective, encourage all state employees to utilize hybrid−electric vehicles or vehicles that operate on gasohol or alternative fuel for all state−owned or state−leased motor vehicles whenever such utilization is feasible. However, the department shall not lease or purchase any hybrid−electric vehicle, or authorize the lease or purchase of any hybrid−electric vehicle, unless the manufacturer certifies to the department that final assembly of the vehicle occurred in the United States.

**(4m)** The department shall, whenever feasible and cost−effective, encourage all agencies to collectively reduce the usage of gasoline and diesel fuel in state−owned vehicles that is petroleum−based below the total amount that the agencies used in 2006 by at least the following percentages:

(a) For gasoline, 20 percent by 2015.

(b) For diesel fuel, 10 percent by 2015.

**(5)** The department shall, whenever feasible and cost−effective, encourage distribution of gasohol and alternative fuels and usage of hybrid−electric vehicles or vehicles that operate on gasohol or alternative fuels by officers and employees who use personal motor vehicles on state business and by residents of this state generally.

**History:** 1993 a. 351; 1995 a. 27; 1997 a. 73; 2001 a. 16; 2003 a. 311; 2005 a. 74, 83, 335; 2007 a. 20, 97; 2009 a. 28, 401; 2011 a. 7, 10, 32, 229; 2013 a. 20, 165.

**16.05 Interstate agreements.** Each administrator, official or chairperson of the state delegation appointed to represent this state in the administration of any interstate agreement shall file with the law revision committee of the joint legislative council a copy of all minutes, reports, publications and other papers prepared in the administration of the agreement.

**History:** 1983 a. 308; 1993 a. 52.

**16.06 American Indian assistance.** The department shall provide information and assistance to American Indians in this state with respect to problems or issues of concern to the American Indian community.

**History:** 1989 a. 336.

**16.10 Ratification of the midwest interstate low−level radioactive waste compact.** The midwest interstate low−level radioactive waste compact contained in s. 16.11, by and between this state and any other state which ratifies or joins this compact, is ratified and approved.

**History:** 1983 a. 393.

**16.11 Midwest interstate low−level radioactive waste compact. (1)** ARTICLE I — POLICY AND PURPOSE. (a) There is created the midwest interstate low−level radioactive waste compact. The states party to this compact recognize that the congress of the United States, by enacting "The Low−Level Radioactive Waste Policy Act", as amended by the "Low−Level Radioactive Waste Policy Amendments Act of 1985", 42 USC 2021b to 2021j, has provided for and encouraged the development of low−level radioactive waste compacts as a tool for disposing of such waste. The party states acknowledge that the congress declared that each state is responsible for providing for the availability of capacity either within or outside the state for the disposal of low−level radioactive waste generated within its borders, except for waste generated as a result of certain defense activities of the federal government or federal research and development activities. The party states also recognize that the disposal of low−level radioactive waste is handled most efficiently on a regional basis and that the safe and efficient management of low−level radioactive waste generated within the region requires that sufficient capacity to dispose of such waste be properly provided. It is the policy of the party states to enter into a regional low−level radioactive waste disposal compact for the purpose of:

1. Providing the instrument and framework for a cooperative effort;

2. Providing sufficient facilities for the proper disposal of low−level radioactive waste generated in the region;

3. Protecting the health and safety of the citizens of the region;

4. Limiting the number of facilities required to effectively and efficiently dispose of low−level radioactive waste generated in the region;

5. Encouraging source reduction and the environmentally sound treatment of waste that is generated to minimize the amount of waste to be disposed of;

6. Ensuring that the costs, expenses, liabilities and obligations of low−level radioactive waste disposal are paid by generators and other persons who use compact facilities to dispose of their waste;

7. Ensuring that the obligations of low−level radioactive waste disposal that are the responsibility of the party states are shared equitably among them;

8. Ensuring that the party states that comply with the terms of this compact and fulfill their obligations under it share equitably in the benefits of the successful disposal of low−level radioactive waste; and

9. Ensuring the environmentally sound, economical and secure disposal of low−level radioactive wastes.

(b) Implicit in the congressional consent to this compact is the expectation by the congress and the party states that the appropriate federal agencies will actively assist the compact commission and the individual party states to this compact by:

1. Expeditious enforcement of federal rules, regulations and laws;

2. Imposition of sanctions against those found to be in violation of federal rules, regulations and laws; and

3. Timely inspection of their licensees to determine the compliance with these rules, regulations and laws.

**(2)** ARTICLE II — DEFINITIONS. As used in this compact, unless the context clearly requires a different construction:

(a) "Care" means the continued observation of a facility after closing for the purposes of detecting a need for maintenance, ensuring environmental safety and determining compliance with applicable licensure and regulatory requirements and includes the correction of problems which are detected as a result of that observation.

(b) "Close", "closed" or "closing" means that the compact facility with respect to which any of those terms is used has ceased to accept waste for disposal. "Permanently closed" means that the compact facility with respect to which the term is used has ceased to accept waste because it has operated for 20 years or a longer period of time as authorized by sub. (6) (i), its capacity has been reached, the commission has authorized it to close pursuant to sub. (3) (h) 7., the host state of such facility has withdrawn from the compact or had its membership revoked or this compact has been dissolved.

(c) "Commission" means the midwest interstate low−level radioactive waste commission.

(d) "Compact facility" means a waste disposal facility that is located within the region and that is established by a party state pursuant to the designation of that state as a host state by the commission.

(e) "Development" includes the characterization of potential sites for a waste disposal facility, siting of such a facility, licensing of such a facility, and other actions taken by a host state prior to the commencement of construction of such a facility to fulfill its obligations as a host state.

(f) "Disposal", with regard to low−level radioactive waste, means the permanent isolation of that waste in accordance with the requirements established by the U.S. nuclear regulatory commission or the licensing agreement state.

(g) "Disposal plan" means the plan adopted by the commission for the disposal of waste within the region.

(h) "Facility" means a parcel of land or site, together with the structures, equipment and improvements on or appurtenant to the land or site, which is or has been used for the disposal of low−level radioactive waste, which is being developed for that purpose or upon which the construction of improvements or installation of equipment is occurring for that purpose.

(i) "Final decision" means a final action of the commission determining the legal rights, duties or privileges of any person. "Final decision" does not include preliminary, procedural or intermediate actions by the commission, actions regulating the internal administration of the commission or actions of the commission to enter into or refrain from entering into contracts or agreements with vendors to provide goods or services to the commission.

(j) "Generator" means a person who first produces low−level radioactive waste, including, without limitation, any person who does so in the course of or incident to manufacturing, power generation, processing, waste treatment, waste storage, medical diagnosis and treatment, research or other industrial or commercial activity. If the person who first produced an item or quantity of waste cannot be identified, "generator" means the person first possessing the waste who can be identified.

(k) "Host state" means any state which is designated by the commission to host a compact facility or has hosted a compact facility.

(L) "Long−term care" means those activities taken by a host state after a compact facility is permanently closed to ensure the protection of air, land and water resources and the health and safety of all people who may be affected by the facility.

(m) "Low−level radioactive waste" or "waste" means radioactive waste that is not classified as high−level radioactive waste and that is class A, B or C low−level radioactive waste as defined in 10 CFR 61.55, as that section existed on January 26, 1983. "Low−level radioactive waste" or "waste" does not include any such radioactive waste that is owned or generated by the U.S. department of energy or by the U.S. navy as a result of the decommissioning of its vessels; or as a result of any research, development, testing or production of any atomic weapon.

(n) "Operates", "operational" or "operating" means that the compact facility with respect to which any of those terms is used accepts waste for disposal.

(o) "Party state" means any eligible state that enacts this compact into law, pays any eligibility fee established by the commission, and has not withdrawn from this compact or had its membership in this compact revoked, provided that a state that has withdrawn from this compact or had its membership revoked again becomes a party state if it is readmitted to membership in this compact pursuant to sub. (8) (a). "Party state" includes any host state. "Party state" also includes any statutorily created administrative departments, agencies or instrumentalities of a party state, but does not include municipal corporations, regional or local units of government or other political subdivisions of a party state that are responsible for governmental activities on less than a statewide basis.

(p) "Person" means any individual, corporation, association, business enterprise or other legal entity either public or private and any legal successor, representative, agent or agency of that individual, corporation, association, business enterprise or other legal entity. "Person" also includes the United States, states, political subdivisions of states and any department, agency or instrumentality of the United States or a state.

(q) "Region" means the area of the party states.

(r) "Site" means the geographic location of a facility.

(s) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

(t) "Storage" means the temporary holding of waste.

(u) "Treatment" means any method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of any waste in order to render the waste safer for transport or management, amenable to recovery, convertible to another usable material or reduced in volume.

(v) "Waste management", "manage waste", "management of waste", "management" or "managed" means the storage, treatment or disposal of waste.

**(3)** ARTICLE III — THE COMMISSION. (a) There is created the midwest interstate low−level radioactive waste commission. The commission consists of one voting member from each party state. The governor of each party state shall notify the commission in writing of its member and any alternates. An alternate may act on behalf of the member only in that member's absence. The method for selection and the expenses of each commission member shall be the responsibility of the member's respective state.

(b) Each commission member is entitled to one vote. Except as otherwise specifically provided in this compact, an action of the commission is binding if a majority of the total membership casts its vote in the affirmative. A party state may direct its member or alternate member of the commission how to vote or not to vote on matters before the commission.

(c) The commission shall elect annually from among its members a chairperson. The commission shall adopt and publish, in convenient form, bylaws and policies which are not inconsistent with this compact, including procedures for the use of binding arbitration under sub. (6) (o) and procedures which substantially conform with the provisions of "The Federal Administrative Procedure Act", 5 USC 500 to 559, in regard to notice, conduct and recording of meetings; access by the public to records; provision of information to the public; conduct of adjudicatory hearings; and issuance of decisions.

(d) The commission shall meet at least once annually and shall also meet upon the call of the chairperson or any other commission member.

(e) All meetings of the commission shall be open to the public with reasonable advance notice. The commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters. However, all commission actions and decisions shall be made in open meetings and appropriately recorded.

(f) The commission may establish advisory committees for the purpose of advising the commission on any matters pertaining to waste management.

(g) The office of the commission shall be in a party state. The commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall have the responsibilities and authority delegated to it by the commission in its bylaws. The staff shall serve at the commission's pleasure with the exception that staff hired as the result of securing federal funds shall be hired and governed under applicable federal statutes and regulations. In selecting any staff, the commission shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the commission.

(h) The commission may do any or all of the following:

1. Appear as an intervenor or party in interest before any court of law or any federal, state or local agency, board or commission in any matter related to waste management. In order to represent its views, the commission may arrange for any expert testimony, reports, evidence or other participation.

2. Review any emergency closing of a compact facility, determine the appropriateness of that closing and take whatever lawful

actions are necessary to ensure that the interests of the region are protected.

3. Take any action which is appropriate and necessary to perform its duties and functions as provided in this compact.

4. Approve the disposal of naturally occurring and accelerator produced radioactive material at a compact facility. The commission shall not approve the acceptance of such material without first making an explicit determination of the effect of the new waste stream on the compact facility's maximum capacity. Such approval requires the affirmative vote of a majority of the commission, including the affirmative vote of the member from the host state of the compact facility that would accept the material for disposal. Any such host state may, at any time, rescind its vote granting the approval and, thereafter, additional naturally occurring and accelerator produced radioactive material shall not be disposed of at a compact facility unless the disposal is again approved. All provisions of this compact apply to the disposal of naturally occurring and accelerator produced radioactive material that has been approved for disposal at a compact waste facility pursuant to this subdivision.

5. Enter into contracts in order to perform its duties and functions as provided in this compact.

6. When approved by the commission, with the member from each host state in which an affected compact facility is operating or being developed or constructed voting in the affirmative, enter into agreements to do any of the following:

a. Import, for disposal within the region, waste generated outside the region.

b. Export, for disposal outside the region, waste generated inside the region.

c. Dispose of waste generated within the region at a facility within the region that is not a compact facility.

7. Authorize a host state to permanently close a compact facility located within its borders earlier than otherwise would be required by sub. (6) (i). Such a closing requires the affirmative vote of a majority of the commission, including the affirmative vote of the member from the state in which the affected compact facility is located.

(i) The commission shall do all of the following:

1. Submit an annual report to, and otherwise communicate with, the governors and the appropriate officers of the legislative bodies of the party states regarding the activities of the commission.

2. Adopt and amend, by a two−thirds vote of the membership, in accordance with the procedures and criteria developed pursuant to sub. (4), a regional disposal plan which designates host states for the establishment of needed compact facilities.

3. Adopt an annual budget.

4. Establish and implement a procedure for determining the capacity of a compact facility. The capacity of a compact facility shall be established as soon as reasonably practical after the host state of the facility is designated and shall not be changed thereafter without the consent of the host state. The capacity of a compact facility shall be based on the projected volume or radioactive characteristics, or both, of the waste to be disposed of at the facility during the period set forth in sub. (6) (i).

5. Provide a host state with funds necessary to pay reasonable development expenses incurred by the host state after it is designated to host a compact facility.

6. Establish and implement procedures for making payments from the remedial action fund provided for in par. (p).

7. Establish and implement procedures to investigate any complaint joined in by 2 or more party states regarding another party state's performance of its obligations under this compact.

8. Adopt policies promoting source reduction and the environmentally sound treatment of waste in order to minimize the amount of waste to be disposed of at compact facilities.

9. Establish and implement procedures for obtaining information from generators regarding the volume and characteristics of waste projected to be disposed of at compact facilities and regarding generator activities with respect to source reduction, recycling and treatment of waste.

10. Prepare annual reports regarding the volume and characteristics of waste projected to be disposed of at compact facilities.

(j) Funding for the commission shall be provided as follows:

1. When no compact facility is operating, the commission may assess fees to be collected from generators of waste in the region. The fees shall be reasonable and equitable. The commission shall establish and implement procedures for assessing and collecting the fees. The procedures may allow the assessing of fees against less than all generators of waste in the region; provided that if fees are assessed against less than all generators of waste in the region, generators paying the fees shall be reimbursed the amount of the fees, with reasonable interest, out of the revenues of operating compact facilities.

2. When a compact facility is operating, funding for the commission shall be provided through a surcharge collected by the host state as part of the fee system provided for in sub. (6) (j). The surcharge to be collected by the host state shall be determined by the commission and shall be reasonable and equitable.

3. In the aggregate, the fees or surcharges, as the case may be, shall be no more than is necessary to:

a. Cover the annual budget of the commission.

b. Provide a host state with the funds necessary to pay reasonable development expenses incurred by the host state after it is designated to host a compact facility.

c. Provide moneys for deposit in the remedial action fund established pursuant to par. (p).

d. Provide moneys to be added to an inadequately funded long−term care fund as provided in sub. (6) (o).

(k) Financial statements of the commission shall be prepared according to generally accepted accounting principles. The commission shall contract with an independent certified public accountant to annually audit its financial statements and to submit an audit report to the commission. The audit report shall be made a part of the annual report of the commission required by this subsection.

(L) The commission may accept for any of its purposes and functions and may utilize and dispose of any donations, grants of money, equipment, supplies, materials and services from any state or the United States, or any subdivision or agency thereof, or interstate agency or from any institution, person, firm or corporation. The nature, amount and condition, if any, attendant upon any donation or grant accepted or received by the commission together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the commission.

(m) The commission is a legal entity separate and distinct from the party states. Members of the commission and its employees are not personally liable for actions taken by them in their official capacity. The commission is not liable or otherwise responsible for any costs, expenses or liabilities resulting from the development, construction, operation, regulation, closing or long−term care of any compact facility or any noncompact facility made available to the region by any contract or agreement entered into by the commission under par. (h) 6. Nothing in this paragraph relieves the commission of its obligations under this subsection or under contracts to which it is a party. Any liabilities of the commission are not liabilities of the party states.

(n) Final decisions of the commission shall be made, and shall be subject to judicial review, in accordance with all of the following conditions:

1. Every final decision shall be made at an open meeting of the commission. Before making a final decision, the commission shall provide an opportunity for public comment on the matter to

be decided. Each final decision shall be reduced to writing and shall set forth the commission's reasons for making the decision.

2. Before making a final decision, the commission may conduct an adjudicatory hearing on the proposed decision.

3. Judicial review of a final decision shall be initiated by filing a petition in the U.S. district court for the district in which the person seeking the review resides or in which the commission's office is located not later than 60 days after issuance of the commission's written decision. Concurrently with filing the petition for review with the court, the petitioner shall serve a copy of the petition on the commission. Within 5 days after receiving a copy of the petition, the commission shall mail a copy of it to each party state and to all other persons who have notified the commission of their desire to receive copies of such petitions. Any failure of the commission to so mail copies of the petition does not affect the jurisdiction of the reviewing court. Except as otherwise provided in this subdivision, standing to obtain judicial review of final decisions of the commission and the form and scope of the review are subject to and governed by 5 USC 706.

4. If a party state seeks judicial review of a final decision of the commission that does any of the following, the facts shall be subject to trial de novo by the reviewing court unless trial de novo of the facts is affirmatively waived in writing by the party state:

a. Imposes financial penalties on a party state.

b. Suspends the right of a party state to have waste generated within its borders disposed of at a compact facility or at a noncompact facility made available to the region by an agreement entered into by the commission under par. (h) 6.

c. Terminates the designation of a party state as a host state.

d. Revokes the membership of a party state in this compact.

e. Establishes the amounts of money that a party state that has withdrawn from this compact or had its membership in this compact revoked is required to pay under sub. (8) (e).

4m. Any trial de novo under subd. 4. of the facts shall be governed by the federal rules of civil procedure and the federal rules of evidence.

5. Preliminary, procedural or intermediate actions by the commission that precede a final decision are subject to review only in conjunction with review of the final decision.

6. Except as provided in subd. 5., actions of the commission that are not final decisions are not subject to judicial review.

(o) Unless approved by a majority of the commission, with the member from each host state in which an affected compact facility is operating or is being developed or constructed voting in the affirmative, no person shall do any of the following:

1. Import waste generated outside the region for management within the region.

2. Export waste generated within the region for disposal outside the region.

3. Manage waste generated outside the region at a facility within the region.

4. Dispose of waste generated within the region at a facility within the region that is not a compact facility.

(p) The commission shall establish a remedial action fund to pay the costs of reasonable remedial actions taken by a party state if an event results from the development, construction, operation, closing or long−term care of a compact facility that poses a threat to human health, safety or welfare or to the environment. The amount of the remedial action fund shall be adequate to pay the costs of all reasonably foreseeable remedial actions. A party state shall notify the commission as soon as reasonably practical after the occurrence of any event that may require the party state to take a remedial action. The failure of a party state to so notify the commission does not limit the rights of the party state under this paragraph. If the moneys in the remedial action fund are inadequate to pay the costs of reasonable remedial actions, the amount of the deficiency is a liability with respect to which generators shall provide indemnification under sub. (7) (g). Generators who provide the required indemnification have the rights of contribution provided in sub. (7) (g). This paragraph applies to any remedial action taken by a party state regardless of whether the party state takes the remedial action on its own initiative or because it is required to do so by a court or regulatory agency of competent jurisdiction.

(q) If the commission makes payment from the remedial action fund provided for in par. (p), the commission is entitled to obtain reimbursement under applicable rules of law from any person who is responsible for the event giving rise to the remedial action. Such reimbursement may be obtained from a party state only if the event giving rise to the remedial action resulted from the activities of that party state as a generator of waste.

(r) If this compact is dissolved, all moneys held by the commission shall be used first to pay for any ongoing or reasonably anticipated remedial actions. Any remaining moneys shall be distributed in a fair and equitable manner to those party states that have operating or closed compact facilities within their borders and shall be added to the long−term care funds maintained by those party states.

**(4)** ARTICLE IV — REGIONAL DISPOSAL PLAN. The commission shall adopt and periodically update a regional disposal plan designed to ensure the safe and efficient disposal of waste generated within the region. In adopting a regional waste disposal plan the commission shall do all of the following:

(a) Adopt procedures for determining, consistent with considerations for public health and safety, the type and number of compact facilities which are presently necessary and which are projected to be necessary to dispose of waste generated within the region;

(b) Develop and adopt procedures and criteria for identifying a party state as a host state for a compact facility. In developing these criteria, the commission shall consider all of the following:

1. The health, safety and welfare of the citizens of the party states.

2. The existence of compact facilities within each party state.

3. The minimization of waste transportation.

4. The volumes and types of wastes projected to be generated within each party state.

5. The environmental impacts on the air, land and water resources of the party states.

6. The economic impacts on the party states.

(c) Conduct such hearings and obtain such reports, studies, evidence and testimony required by its approved procedures prior to identifying a party state as a host state for a needed compact facility;

(d) Prepare a draft disposal plan and any update thereof, including procedures, criteria and host states, which shall be made available in a convenient form to the public for comment. Upon the request of a party state, the commission shall conduct a public hearing in that state prior to the adoption or update of the disposal plan. The disposal plan and any update thereof shall include the commission's response to public and party state comment.

**(5)** ARTICLE V — RIGHTS AND OBLIGATIONS OF PARTY STATES. (a) Each party state shall act in good faith in the performance of acts and courses of conduct which are intended to ensure the provision of facilities for regional availability and usage in a manner consistent with this compact.

(b) Except for waste attributable to radioactive material or waste imported into the region in order to render the material or waste amenable to transportation, storage, disposal or recovery, or in order to convert the waste or material to another usable material, or to reduce it in volume or otherwise treat it, each party state has the right to have all wastes generated within its borders disposed of at compact facilities subject to the payment of all fees established by the host state under sub. (6) (j) and to the provisions contained in subs. (6) (L) and (s), (8) (d), (9) (d) and (10). All party states have an equal right of access to any facility made available

to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6., subject to the provisions of subs. (6) (L) and (s), (8) (d) and (10).

(c) If a party state's right to have waste generated within its borders disposed of at compact facilities, or at any noncompact facility made available to the region by an agreement entered into by the commission under sub. (3) (h) 6., is suspended, no waste generated within its borders by any person shall be disposed of at any such facility during the period of the suspension.

(d) To the extent permitted by federal law, each party state may enforce any applicable federal and state laws, regulations and rules pertaining to the packaging and transportation of waste generated within or passing through its borders. Nothing in this paragraph shall be construed to require a party state to enter into any agreement with the U.S. nuclear regulatory commission.

(e) Each party state shall provide to the commission any data and information the commission requires to implement its responsibilities. Each party state shall establish the capability to obtain any data and information required by the commission.

(f) If, notwithstanding the sovereign immunity provision in sub. (7) (f) 1. and the indemnification provided for in subs. (3) (p), (6) (o) and (7) (g), a party state incurs a cost as a result of an inadequate remedial action fund or an exhausted long−term care fund, or incurs a liability as a result of an action described in sub. (7) (f) 1. and not described in sub. (7) (f) 2., the cost or liability shall be the pro rata obligation of each party state and each state that has withdrawn from this compact or had its membership in this compact revoked. The commission shall determine each state's pro rata obligation in a fair and equitable manner based on the amount of waste from each such state that has been or is projected to be disposed of at the compact facility with respect to which the cost or liability to be shared was incurred. No state shall be obligated to pay the pro rata obligation of any other state. The pro rata obligations provided for in this paragraph do not result in the creation of state debt. Rather, the pro rata obligations are contractual obligations that shall be enforced by only the commission or an affected party state.

(g) If the party states make payment pursuant to par. (f), the surcharge or fee provided for in sub. (3) (j) shall be used to collect the funds necessary to reimburse the party states for those payments. The commission shall determine the time period over which reimbursement shall take place.

**(6)** ARTICLE VI — DEVELOPMENT, OPERATION AND CLOSING OF COMPACT FACILITIES. (a) Any party state may volunteer to become a host state and the commission may designate that state as a host state.

(b) If not all compact facilities required by the regional disposal plan are developed pursuant to par. (a), the commission may designate a host state.

(c) After a state is designated a host state by the commission, the state is responsible for the timely development and operation of the compact facility it is designated to host. The development and operation of the compact facility shall not conflict with applicable federal and host state laws, rules and regulations, provided that the laws, rules and regulations of a host state and its political subdivisions shall not prevent, nor shall they be applied so as to prevent, the host state's discharge of the obligation set forth in this paragraph. The obligation set forth in this paragraph is contingent upon the discharge by the commission of its obligation set forth in sub. (3) (i) 5.

(d) If a party state designated as a host state fails to discharge the obligations imposed upon it by par. (c), its host state designation may be terminated by a two−thirds vote of the commission with the member from the host state of any then−operating compact facility voting in the affirmative. A party state whose host state designation has been terminated has failed to fulfill its obligations as a host state and is subject to the provisions of sub. (8) (d).

(e) Any party state designated as a host state may request the commission to relieve that state of the responsibility to serve as a host state. Except as set forth in par. (d), the commission may relieve a party state of its responsibility only upon a showing by the requesting party state that, based upon criteria established by the commission that are consistent with any applicable federal criteria, no feasible potential compact facility site exists within its borders. A party state relieved of its host state responsibility shall repay to the commission any funds provided to that state by the commission for the development of a compact facility and also shall pay to the commission the amount the commission determines is necessary to ensure that the commission and the other party states do not incur financial loss as a result of the state being relieved of its host state responsibility. Any funds so paid to the commission with respect to the financial loss of the other party states shall be distributed forthwith by the commission to the party states that would otherwise incur the loss. In addition, until the state relieved of its responsibility is again designated as a host state and a compact facility is located in that state begins operating, it shall annually pay to the commission, for deposit in the remedial action fund, an amount the commission determines is fair and equitable in light of the fact the state has been relieved of the responsibility to host a compact facility but continues to enjoy the benefits of being a member of this compact.

(f) The host state shall select the technology for the compact facility. If requested by the commission, information regarding the technology selected by the host state shall be submitted to the commission for its review. The commission may require the host state to make changes in the technology selected by the host state if the commission demonstrates that the changes do not decrease the protection of air, land and water resources and the health and safety of all people who may be affected by the facility. If requested by the host state, any commission decision requiring the host state to make changes in the technology shall be preceded by an adjudicatory hearing in which the commission shall have the burden of proof.

(g) A host state may assign to a private contractor the responsibility, in whole or in part, to develop, construct, operate, close or provide long−term care for a compact facility. Assignment of such responsibility by a host state to a private contractor does not relieve the host state of any responsibility imposed upon it by this compact. A host state may secure indemnification from the contractor for any costs, liabilities and expenses incurred by the host state resulting from the development, construction, operation, closing or long−term care of a compact facility.

(h) To the extent permitted by federal and state law, a host state shall regulate and license any facility within its borders and ensure the long−term care of that facility.

(i) A host state shall accept waste for disposal for a period of 20 years from the date on which the compact facility in the host state becomes operational or until its capacity has been reached, whichever occurs first. At any time before the compact facility closes, the host state and the commission may enter into an agreement to extend the period during which the host state is required to accept such waste or to increase the capacity of the compact facility. Except as specifically authorized by par. (L) 4., the 20−year period shall not be extended, and the capacity of the facility shall not be increased, without the consent of the affected host state and the commission.

(j) A host state shall establish a system of fees to be collected from the users of any compact facility within its borders. The fee system, and the costs paid through the system, shall be reasonable and equitable. The fee system shall be subject to the commission's approval. The fee system shall provide the host state with sufficient revenue to pay costs associated with the compact facility including, but not limited to, operation, closing, long−term care, debt service, legal costs, local impact assistance and local financial incentives. The fee system also shall be used to collect the surcharge provided in sub. (3) (j) 2. The fee system shall include

incentives for source reduction and shall be based on the hazard of the waste as well as the volume.

(k) A host state shall ensure that a compact facility located within its borders that is permanently closed is properly cared for so as to ensure protection of air, land and water resources and the health and safety of all people who may be affected by the facility.

(L) The development of subsequent compact facilities shall be as follows:

1. No compact facility shall begin operating until the commission designates the host state of the next compact facility.

2. The following actions shall be taken by the state designated to host the next compact facility within the specified number of years after the compact facility it is intended to replace begins operation:

a. Within 3 years, enact legislation providing for the development of the next compact facility.

b. Within 7 years, initiate site characterization investigations and tests to determine licensing suitability for the next compact facility.

c. Within 11 years, submit a license application for the next compact facility that the responsible licensing authority deems complete.

2m. If a host state fails to take any of the actions under subd. 2. within the specified time, all waste generated by any person within that state shall be denied access to the then−operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6., until the action is taken. Denial of access may be rescinded by the commission, with the member from the host state of the then−operating compact facility voting in the affirmative. A host state that fails to take any of these actions within the specified time has failed to fulfill its obligations as a host state and is subject to the provisions of par. (d) and sub. (8) (d).

3. Within 14 years after any compact facility begins operating, the state designated to host the next compact facility shall have obtained a license from the responsible licensing authority to construct and operate the compact facility that the state has been designated to host. If the license is not obtained within the specified time, all waste generated by any person within the state designated to host the next compact facility shall be denied access to the then−operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6., until the license is obtained. The state designated to host the next compact facility shall have failed in its obligations as a host state and shall be subject to par. (d) and sub. (8) (d). In addition, at the sole option of the host state of the then−operating compact facility, all waste generated by any person within any party state that has not fully discharged its obligations under par. (i) shall be denied access to the then−operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6., until the license is obtained. Denial of access may be rescinded by the commission, with the member from the host state of the then−operating compact facility voting in the affirmative.

4. If 20 years after a compact facility begins operating the next compact facility is not ready to begin operating, the state designated to host the next compact facility shall have failed in its obligation as a host state and shall be subject to par. (d) and sub. (8) (d). If at the time the capacity of the then−operating compact facility has been reached, or 20 years after the facility began operating, whichever occurs first, the next compact facility is not ready to begin operating, the host state of the then−operating compact facility, without the consent of any other party state or the commission, may continue to operate the facility until a compact facility in the next host state is ready to begin operating. During any such period of continued operation of a compact facility, all waste generated by any person within the state designated to host the next compact facility shall be denied access to the then−operating compact facility and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6. In addition, during such period, at the sole option of the host state of the then−operating compact facility, all waste generated by any person within any party state that has not fully discharged its obligations under par. (i) shall be denied access to the then−operating compact facility and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6. Denial of access may be rescinded by the commission, with the member from the host state of the then−operating compact facility voting in the affirmative. The provisions of this subdivision shall not apply if their application is inconsistent with an agreement between the host state of the then−operating compact facility and the commission as authorized in par. (i) or inconsistent with par. (p) or (q).

5. During any period that access is denied for waste disposal pursuant to subd. 2m., 3. or 4., the party state designated to host the next compact disposal facility shall pay to the host state of the then−operating compact facility an amount the commission determines is reasonably necessary to ensure that the host state, or any agency or political subdivision thereof, does not incur financial loss as a result of the denial of access.

6. The commission may modify any of the requirements contained in subds. 2., 2m. and 3. if it finds that circumstances have changed so that the requirements are unworkable or unnecessarily rigid or no longer serve to ensure the timely development of a compact facility. The commission may adopt such a finding by a two−thirds vote, with the member from the host state of the then−operating compact facility voting in the affirmative.

(m) This compact shall not prevent an emergency closing of a compact facility by a host state to protect air, land and water resources and the health and safety of all people who may be affected by the facility. A host state that has an emergency closing of a compact facility shall notify the commission in writing within 3 working days of its action and shall, within 30 working days of its action, demonstrate justification for the closing.

(n) A party state that has fully discharged its obligations under par. (i) shall not again be designated a host state of a compact facility without its consent until each party state has been designated to host a compact facility and has fully discharged its obligations under par. (i) or has been relieved under par. (e) of its responsibility to serve as a host state.

(o) Each host state of a compact facility shall establish a long−term care fund to pay for monitoring, security, maintenance and repair of the facility after it is permanently closed. The expenses of administering the long−term care fund shall be paid out of the fund. The fee system established by the host state that establishes a long−term care fund shall be used to collect moneys in amounts that are adequate to pay for all long−term care of the compact facility. The moneys shall be deposited into the long−term care fund. Except where the matter is resolved through arbitration, the amount to be collected through the fee system for deposit into the fund shall be determined through an agreement between the commission and the host state establishing the fund. Not less than 3 years, nor more than 5 years, before the compact facility it is designated to host is scheduled to begin operating, the host state shall propose to the commission the amount to be collected through the fee system for deposit into the fund. If, 180 days after such proposal is made to the commission, the host state and the commission have not agreed, either the commission or the host state may require the matter to be decided through binding arbitration. The method of administration of the fund shall be determined by the host state establishing the long−term care fund, provided that moneys in the fund shall be used only for the purposes set forth in this paragraph and shall be invested in accordance with the standards applicable to trustees under the laws of the host state establishing the fund. If, after a compact facility is closed, the commission determines the long−term care fund established with respect to that facility is not adequate to pay for all long−term care for that facility, the commission shall collect and pay over to the host state

of the closed facility, for deposit into the long−term care fund, an amount determined by the commission to be necessary to make the amount in the fund adequate to pay for all long−term care of the facility. If a long−term care fund is exhausted and long−term care expenses for the facility with respect to which the fund was created have been reasonably incurred by the host state of the facility, those expenses are a liability with respect to which generators shall provide indemnification as provided in sub. (7) (g). Generators that provide indemnification shall have contribution rights as provided in sub. (7) (g).

(p) A host state that withdraws from the compact or has its membership revoked shall immediately and permanently close any compact facility located within its borders, except that the commission and a host state may enter into an agreement under which the host state may continue to operate, as a noncompact facility, a facility within its borders that, before the host state withdrew or had its membership revoked, was a compact facility.

(q) If this compact is dissolved, the host state of any then−operating compact facility shall immediately and permanently close the facility, provided that a host state may continue to operate a compact facility or resume operating a previously closed compact facility, as a noncompact facility, subject to all of the following requirements:

1. The host state shall pay to the other party states the portion of the funds provided to that state by the commission for the development, construction, operation, closing or long−term care of a compact facility that is fair and equitable, taking into consideration the period of time the compact facility located in that state was in operation and the amount of waste disposed of at the facility, provided that a host state that has fully discharged its obligations under par. (i) shall not be required to make such payment.

2. The host state shall physically segregate waste disposed of at the facility after this compact is dissolved from waste disposed of at the facility before this compact is dissolved.

3. The host state shall indemnify and hold harmless the other party states from all costs, liabilities and expenses, including reasonable attorney fees and expenses, caused by operating the facility after this compact is dissolved, provided that this indemnification and hold−harmless obligation shall not apply to costs, liabilities and expenses resulting from the activities of a host state as a generator of waste.

4. Moneys in the long−term care fund established by the host state that are attributable to the operation of the facility before this compact is dissolved, and investment earnings thereon, shall be used only to pay the cost of monitoring, securing, maintaining or repairing that portion of the facility used for the disposal of waste before this compact is dissolved. Such moneys and investment earnings, and any moneys added to the long−term care fund through a distribution authorized by sub. (3) (r), also may be used to pay the cost of any remedial action made necessary by an event resulting from the disposal of waste at the facility before this compact is dissolved.

(r) Financial statements of a compact facility shall be prepared according to generally accepted accounting principles. The commission may require the financial statements to be audited on an annual basis by a firm of certified public accountants selected and paid by the commission.

(s) Waste may be accepted for disposal at a compact facility only if the generator of the waste has signed, and there is on file with the commission, an agreement to provide indemnification to a party state, or employee of that state, for all of the following:

1. Any cost of a remedial action described in sub. (3) (p) that, due to inadequacy of the remedial action fund, is not paid as set forth in that provision.

2. Any expense for long−term care described in par. (o) that, due to exhaustion of the long−term care fund, is not paid as set forth in that provision.

3. Any liability for damages to persons, property or the environment incurred by a party state, or employee of that state while acting within the scope of employment, resulting from the development, construction, operation, regulation, closing or long−term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6., or any other matter arising from this compact. The agreement also shall require generators to indemnify the party state or employee against all reasonable attorney fees and expenses incurred in defending any action for such damages. This indemnification shall not extend to liability based on any of the following:

a. The activities of the party states as generators of waste.

b. The obligations of the party states to each other and the commission imposed by this compact or other contracts related to the disposal of waste under this compact.

c. Activities of a host state or employees thereof that are grossly negligent or willful and wanton.

(t) The agreement under par. (s) shall provide that the indemnification obligation of generators shall be joint and several, except that the indemnification obligation of the party states with respect to their activities as generators of waste shall not be joint and several, but instead shall be prorated according to the amount of waste that each state had disposed of at the compact facility giving rise to the liability. Such proration shall be calculated as of the date of the event giving rise to the liability. The agreement shall be in a form approved by the commission with the member from the host state of any then−operating compact facility voting in the affirmative. Among generators there shall be rights of contribution based on equitable principles and generators shall have rights of contribution against any other person responsible for such damages under common law, statute, rule or regulation, provided that a party state that through its own activities did not generate any waste disposed of at the compact facility giving rise to the liability, an employee of such a party state and the commission shall have no such contribution obligation. The commission may waive the requirement that the party state sign and file such an indemnification agreement as a condition to being able to dispose of waste generated as a result of the party state's activities. Such a waiver shall not relieve a party state of the indemnification obligation imposed by sub. (7) (g).

**(7)** ARTICLE VII — OTHER LAWS AND REGULATIONS. (a) Nothing in this compact:

1. Abrogates or limits the applicability of any act of congress or diminishes or otherwise impairs the jurisdiction of any federal agency expressly conferred thereon by the congress;

2. Prevents the enforcement of any other law of a party state which is not inconsistent with this compact;

3. Prohibits any generator from storing or treating, on its own premises, waste generated by it within the region;

4. Affects any administrative or judicial proceeding pending on the effective date of this compact;

5. Alters the relations between and the respective internal responsibility of the government of a party state and its subdivisions;

6. Affects the generation, treatment, storage or disposal of waste generated by the atomic energy defense activities of the secretary of the U.S. department of energy or successor agencies or federal research and development activities as described in 42 USC 2021;

7. Affects the rights and powers of any party state or its political subdivisions, to the extent not inconsistent with this compact, to regulate and license any facility or the transportation of waste within its borders.

8. Requires a party state to enter into any agreement with the U.S. nuclear regulatory commission.

9. Limits, expands or otherwise affects the authority of a state to regulate low−level radioactive waste classified by any agency of the U.S. government as "below regulatory concern" or otherwise exempt from federal regulation.

(b) If a court of the United States finally determines that a law of a party state conflicts with this compact, this compact shall prevail to the extent of the conflict. The commission shall not commence an action seeking such a judicial determination unless commencement of the action is approved by a two−thirds vote of the membership of the commission.

(c) Except as authorized by this compact, no law, rule or regulation of a party state or of any of its subdivisions or instrumentalities may be applied in a manner which discriminates against the generators of another party state.

(d) Except as provided in par. (f) and sub. (3) (m), no provision of this compact shall be construed to eliminate or reduce in any way the liability or responsibility, whether arising under common law, statute, rule or regulation, of any person for penalties, fines or damages to persons, property or the environment resulting from the development, construction, operation, closing or long−term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6., or any other matter arising from this compact. The provisions of this compact shall not alter otherwise applicable laws relating to compensation of employees for workplace injuries.

(e) Except as provided in 28 USC 1251 (a), the district courts of the United States have exclusive jurisdiction to decide cases arising under this compact. This paragraph does not apply to proceedings within the jurisdiction of state or federal regulatory agencies nor to judicial review of proceedings before state or federal regulatory agencies. This paragraph shall not be construed to diminish other laws of the United States conferring jurisdiction on the courts of the United States.

(f) For the purposes of activities pursuant to this compact, the sovereign immunity of party states and employees of party states shall be as follows:

1. A party state or employee thereof, while acting within the scope of employment, shall not be subject to suit or held liable for damages to persons, property or the environment resulting from the development, construction, operation, regulation, closing or long−term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6. This applies whether the claimed liability of the party state or employee is based on common law, statute, rule or regulation.

2. The sovereign immunity granted in subd. 1. does not apply to any of the following:

a. Actions based upon the activities of the party states as generators of waste. With regard to those actions, the sovereign immunity of the party states shall not be affected by this compact.

b. Actions based on the obligations of the party states to each other and the commission imposed by this compact or other contracts related to the disposal of waste under this compact. With regard to those actions, the party states shall have no sovereign immunity.

c. Actions against a host state, or employee thereof, when the host state or employee acted in a grossly negligent or willful and wanton manner.

(g) If in any action described in par. (f) 1. and not described in par. (f) 2. it is determined that, notwithstanding par. (f) 1., a party state, or employee of that state who acted within the scope of employment, is liable for damages or has liability for other matters arising under this compact as described in sub. (6) (s) 3., the generators who caused waste to be placed at the compact facility with respect to which the liability was incurred shall indemnify the party state or employee against that liability. Those generators also shall indemnify the party state or employee against all reasonable attorney fees and expenses incurred in defending against any such action. The indemnification obligation of generators under this paragraph shall be joint and several, except that the indemnification obligation of party states with respect to their activities as generators of waste shall not be joint and several, but instead shall be prorated according to the amount of waste each state has disposed of at the compact facility giving rise to the liability. Among generators, there shall be rights of contribution based upon equitable principles and generators shall have rights of contribution against any other person responsible for such damages under common law, statute, rule or regulation. A party state that through its own activities did not generate any waste disposed of at the compact facility giving rise to the liability, an employee of such a party state and the commission shall have no contribution obligation under this paragraph. This paragraph shall not be construed as a waiver of the sovereign immunity provided for in par. (f) 1.

(h) The sovereign immunity of a party state provided for in par. (f) 1. shall not be extended to any private contractor assigned responsibilities as authorized in sub. (6) (g).

**(8)** ARTICLE VIII — ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, SUSPENSION OF ACCESS, ENTRY INTO FORCE AND TERMINATION. (a) Any state may petition the commission to be eligible for membership in the compact. The commission may establish appropriate eligibility requirements. These requirements may include, but are not limited to, an eligibility fee or designation as a host state. A petitioning state becomes eligible for membership in the compact upon the approval of the commission, including the affirmative vote of the member from each host state in which a compact facility is operating or being developed or constructed. Any state becoming eligible upon the approval of the commission becomes a member of the compact when the state enacts this compact into law and pays the eligibility fee established by the commission.

(b) The commission is formed upon the appointment of commission members and the tender of the membership fee payable to the commission by 3 party states. The governor of the first state to enact this compact shall convene the initial meeting of the commission. The commission shall cause legislation to be introduced in the congress which grants the consent of the congress to this compact, and shall take action necessary to organize the commission and implement the provision of this compact.

(c) A party state that has fully discharged its obligations under sub. (6) (i), or has been relieved under sub. (6) (e) of its responsibilities to serve as a host state, may withdraw from this compact by repealing the authorizing legislation and by receiving the unanimous consent of the commission. Withdrawal takes effect on the date specified in the commission resolution consenting to withdrawal. All legal rights of the withdrawn state established under this compact, including, but not limited to, the right to have waste generated within its borders disposed of at compact facilities, cease upon the effective date of withdrawal, but any legal obligations of that party state under this compact, including, but not limited to, those set forth in par. (e) continue until they are fulfilled.

(d) Any party state that fails to comply with the terms of this compact or fails to fulfill its obligations may have reasonable financial penalties imposed against it, the right to have waste generated within its borders disposed of at compact facilities, or any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6., suspended or its membership in the compact revoked by a two−thirds vote of the commission, provided that the membership of the party state designated to host the next compact facility shall not be revoked unless the member from the host state of any then−operating compact facility votes in the affirmative. Revocation takes effect on the date specified in the resolution revoking the party state's membership. All legal rights of the revoked party state established under this compact, including, but not limited to, the right to have waste generated within its borders disposed of at compact facilities, cease upon the effective date of revocation but any legal obligations of that party state under this compact, including, but not limited to, those set forth in par. (e), continue until they are fulfilled. The chairperson of the commission shall transmit written notice of a revocation of a party state's membership in the compact, suspension of a party state's waste disposal rights or imposition of financial penalties immediately following the vote

of the commission to the governor of the affected party state, the governors of all the other party states and the congress of the United States.

(e) A party state that withdraws from this compact or has its membership in the compact revoked before it has fully discharged its obligations under sub. (6) forthwith shall repay to the commission the portion of the funds provided to that state by the commission for the development, construction, operation, closing or long−term care of a compact facility that the commission determines is fair and equitable, taking into consideration the period of time the compact facility located in that host state was in operation and the amount of waste disposed of at the facility. If at any time after a compact facility begins operating a party state withdraws from the compact or has its membership revoked, the withdrawing or revoked party state shall be obligated forthwith to pay to the commission the amount the commission determines would have been paid under the fee system established by the host state of the facility to dispose of at the facility the estimated volume of waste generated in the withdrawing or revoked party state that would have been disposed of at the facility from the time of withdrawal or revocation until the time the facility is closed. Any funds so paid to the commission shall be distributed by the commission to the persons who would have been entitled to receive the funds had they originally been paid to dispose of waste at the facility. Any person receiving such funds from the commission shall apply the funds to the purposes to which they would have been applied had they originally been paid to dispose of waste at the compact facility. In addition, a withdrawing or revoked party state forthwith shall pay to the commission an amount the commission determines to be necessary to cover all other costs and damages incurred by the commission and the remaining party states as a result of the withdrawal or revocation. This paragraph shall be construed and applied so as to eliminate any decrease in revenue resulting from withdrawal of a party state or revocation of a party state's membership, to eliminate financial harm to the remaining party states and to create an incentive for party states to continue as members of the compact and to fulfill their obligations.

(f) Any party state whose right to have waste generated within its borders disposed of at compact facilities is suspended by the commission shall pay to the host state of the compact facility to which access has been suspended the amount that the commission determines is reasonably necessary to ensure that the host state, or any political subdivision thereof, does not incur financial loss as a result of the suspension of access.

(g) This compact becomes effective upon enactment by at least 3 eligible states and consent to this compact by the congress. The consent given to this compact by the congress shall extend to any future admittance of new party states and to the power of the commission to regulate the shipment and disposal of waste and disposal of naturally occurring and accelerator−produced radioactive material pursuant to this compact. Amendments to this compact are effective when enacted by all party states and, if necessary, consented to by the congress. To the extent required by section (4) (d) of "The Low−Level Radioactive Waste Policy Amendments Act of 1985", every 5 years after this compact has taken effect, the congress by law may withdraw its consent.

(h) The withdrawal of a party state from this compact, the suspension of waste disposal rights, the termination of a party state's designation as a host state or the revocation of a state's membership in this compact does not affect the applicability of this compact to the remaining party states.

(i) This compact may be dissolved and the obligations arising under this compact may be terminated only as follows:

1. Through unanimous agreement of all party states expressed in duly enacted legislation.

2. Through withdrawal of consent to this compact by the congress under article 1, section 10, of the U.S. constitution, in which case dissolution shall take place 120 days after the effective date of the withdrawal of consent.

(j) Unless explicitly abrogated by the state legislation dissolving this compact, or if dissolution results from withdrawal of congressional consent, the limitations on the investment and use of long−term care funds in sub. (6) (o) and (q) 4., the contractual obligations in sub. (5) (f), the indemnification obligations and contribution rights in subs. (6) (o), (s) and (t) and (7) (g) and the operation rights and indemnification and hold−harmless obligations in sub. (6) (q) shall remain in force notwithstanding dissolution of this compact.

**(9)** ARTICLE IX — PENALTIES AND ENFORCEMENT. (a) Each party state shall prescribe and enforce penalties against any person who is not an official of another state for violation of any provision of this compact.

(b) The parties to this compact intend that the courts of the United States shall specifically enforce the obligations, including the obligations of party states and revoked or withdrawn party states, established by this compact.

(c) The commission or an affected party state or both may obtain injunctive relief or recover damages or both to prevent or remedy violations of this compact.

(d) Each party state acknowledges that the transport into a host state of waste packaged or transported in violation of applicable laws, rules and regulations may result in the imposition of sanctions by the host state which may include reasonable financial penalties assessed against any generator, transporter or collector responsible for the violation or may include suspension or revocation of access to the facility in the host state by any generator, transporter or collector responsible for the violation.

(e) Each party state has the right to seek legal recourse against any party state which acts in violation of this compact.

(f) This compact shall not be construed to create any cause of action for any person other than a party state or the commission. Nothing in this paragraph shall limit the right of judicial review set forth in sub. (3) (n) 3. or the rights of contribution set forth in subs. (3) (p), (6) (o), (s) and (t) and (7) (g).

**(10)** ARTICLE X — SEVERABILITY AND CONSTRUCTION. The provisions of this compact shall be severable and if any provision of this compact is finally determined by a court of competent jurisdiction to be contrary to the constitution of any participating state or of the United States or the application thereof to any person or circumstance is held invalid, the validity of the remainder of this compact to that person or circumstance and the applicability of the entire compact to any other person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. If any provision of this compact imposing a financial obligation upon a party state, or a state that has withdrawn from this compact or had its membership in this compact revoked, is finally determined by a court of competent jurisdiction to be unenforceable due to the state's constitutional limitations on its ability to pay the obligation, then that state shall use its best efforts to obtain an appropriation to pay the obligation, and, if the state is a party state, its right to have waste generated within its borders disposed of at compact facilities, or any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6., shall be suspended until the appropriation is obtained.

**History:** 1983 a. 393; 1995 a. 115; 1997 a. 35.

**16.115 Fees. (1)** The department shall establish by rule a schedule of annual fees to be paid by nuclear power plant operators and shall collect the fees until a regional facility operated under s. 16.11 begins accepting waste for disposal. The fees shall be based on the number of nuclear reactors at each plant and shall cover 75 percent of the state's costs enumerated in sub. (3) incurred prior to the acceptance of waste at the facility.

**(2)** The department shall establish by rule a schedule of annual fees to be paid by generators, as defined under s. 16.11 (2) (j), who

use a compact facility, as defined in s. 16.11 (2) (d), or a noncompact facility made available by an agreement entered into under s. 16.11 (3) (h) 6. for disposal, and, beginning with the operation of the facility, the department shall collect the fees. The fees shall be based on the volume and hazard of waste generated and shall cover the costs enumerated under sub. (3) which are incurred before and after the acceptance of waste for disposal at the facility. Any nuclear power plant operator who has paid a fee under sub. (1) shall receive credit on the fees required of the operator under this subsection at a rate determined by the department so that, over the first 5 years of the collection of fees under this subsection, the power plant operator receives total credits equal to the fees paid under sub. (1). In addition to covering the costs enumerated under sub. (3), the fees established under this subsection for the first 5 years after the acceptance of waste for disposal at the facility shall be sufficient to repay the loan from the general fund made under s. 20.505 (1) (b), and the secretary shall lapse moneys from the appropriation under s. 20.505 (1) (g) to the general fund for that purpose over the 5−year period.

**(3)** The fees established under subs. (1) and (2) shall cover all of the following costs:

(a) The costs of state agencies in assisting the midwest interstate low−level radioactive waste commission member representing this state.

(b) The actual and necessary expenses of the commissioner in the performance of his or her duties.

(d) The costs of membership in and costs associated with the midwest interstate low−level radioactive waste compact.

**History:** 1983 a. 393, 543; 1995 a. 115; 2005 a. 253.
**Cross−reference:** See also ch. Adm 42, Wis. adm. code.

**16.12 Violation of midwest interstate low−level radioactive waste compact. (1)** Except as provided in sub. (2), any person, other than an official of another state, who violates any provision of the midwest interstate low−level radioactive waste compact under ss. 16.11 to 16.13 shall forfeit not more than $1,000.

**(2)** The sole remedies against the state, other than in its capacity as a generator, for a violation of any provision of the midwest interstate low−level radioactive waste compact under s. 16.11 are the remedies provided in s. 16.11.

**History:** 1983 a. 393; 1995 a. 115.

**16.13 Data collection.** Upon the request of the midwest interstate low−level radioactive waste commission member representing the state, the department may require a generator, as defined under s. 16.11 (2) (j), to provide information necessary for the member to discharge his or her duties under s. 16.11.

**History:** 1983 a. 393; 1995 a. 115.

**16.15 Resource recovery and recycling program. (1)** DEFINITIONS. In this section:

(a) "Agency" has the meaning given under s. 16.52 (7).

(ab) "Authority" has the meaning given under s. 16.70 (2), but excludes the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox River Remediation Authority, and the Wisconsin Economic Development Corporation.

(ae) "Cost of disposing of processed material" has the meaning given in s. 287.11 (2m) (a) 1.

(ah) "Cost of selling processed material" has the meaning given in s. 287.11 (2m) (a) 2.

(aj) "Major appliance" has the meaning given in s. 287.01 (3).

(am) "Office wastepaper" means any wastepaper or wastepaper product generated by an agency.

(ar) "Processed material" has the meaning given in s. 287.11 (2m) (a) 3.

(b) "Recovered material" has the meaning under s. 16.70 (11).

(c) "Recyclable material" means material that is suitable for recycling.

(d) "Recycled material" has the meaning under s. 16.70 (12).

(e) "Recycling" has the meaning under s. 289.43 (1).

(f) "Yard waste" has the meaning given in s. 287.01 (17).

**(2)** PROGRAM ESTABLISHMENT. The department shall establish a resource recovery and recycling program to promote the reduction of solid waste by agencies and authorities, the separation, recovery and disposition of recyclable materials and the procurement of recycled materials and recovered materials. The department shall require each agency and authority to participate in the resource recovery and recycling program. The department shall also investigate opportunities for the inclusion of local governmental units in the resource recovery and recycling program and shall permit participation of local governmental units in the program when feasible.

**(3)** SOURCE SEPARATION. (a) *Requirements.* Except as provided in par. (b), the department shall require each agency and authority to do all of the following:

1. Separate for recycling all lead acid batteries, waste oil and major appliances that are generated as solid waste by the agency or authority beginning on January 1, 1991.

2. Except as provided in this subdivision, separate for recycling at least 50 percent of yard waste that is generated by the agency or authority beginning on January 1, 1992, and all yard waste that is generated by the agency or authority beginning on January 1, 1993. An agency or authority may allow yard waste to be left where it falls or dispose of yard waste on the same property on which it is generated, in lieu of separation for recycling.

3. Separate for recycling at least 50 percent of each of the materials listed in s. 287.07 (3) or (4) that is generated as solid waste by the agency or authority beginning on January 1, 1993, and such greater amount of such materials as the department determines is reasonably feasible beginning on January 1, 1995.

(b) *Variance.* 1. The department of natural resources shall, at the request of an agency or authority, grant a variance to a requirement under par. (a) 3. for up to one year for a material that is generated by the agency or authority in one or more locations if the department of natural resources determines that the cost of selling processed material exceeds any of the following:

a. Forty dollars per ton of processed material, as annually adjusted by the department of natural resources to reflect changes in price levels due to inflation since 1989.

b. The cost of disposing of processed material.

2. The department of natural resources may on its own initiative grant a variance to a requirement under par. (a) 3. for up to one year for a material that is generated by one or more state agencies or authorities in one or more locations if the department of natural resources determines that the cost of selling processed material exceeds the amount under subd. 1. a. or b.

3. The department of natural resources may grant a variance to a requirement under par. (a) for up to one year in the event of an unexpected emergency condition.

**History:** 1987 a. 292; 1989 a. 335; 1995 a. 27, 227; 1999 a. 9; 2005 a. 74; 2007 a. 20; 2009 a. 28; 2011 a. 7, 10; 2013 a. 20.

**16.18 Management assistance grants to certain counties. (1)** In this section, "eligible county" means a county that has a geographic area of less than 400 square miles and that contains no incorporated municipal territory.

**(2)** An eligible county may apply to the department for a management assistance grant annually in each state fiscal year for the purpose of assisting the county in funding one or more of the following functions:

(a) Public security.

(b) Public health.

(c) Public infrastructure.

(d) Public employee training.

(e) Economic development.

(f) General operations.

**(3)** No eligible county may receive a grant under this section unless the county maintains its financial records in accordance with accounting procedures established by the department of revenue, and unless the county submits to the department a detailed expenditure plan that identifies how the grant proceeds are proposed to be expended and how the proposed expenditures will enable the county to meet its goals for execution of the functions specified in sub. (2) for which the grant is requested.

**(4)** The department shall make grants to eligible counties from the appropriation under s. 20.505 (1) (ku).

**(5)** No county may receive a grant under this section in an amount exceeding $600,000 in any state fiscal year.

**History:** 1999 a. 9; 2009 a. 28.

**16.22 National and community service. (1)** DEFINITIONS. In this section:

(a) "Board" means the national and community service board.

(b) "Corporation" means the corporation for national and community service created under 42 USC 12651.

(c) "National service program" means a program that addresses unmet human, educational, environmental or public safety needs and that receives financial assistance from the corporation or the board.

(dm) "Youth corps program" means a full−time, year−round national service program or a full−time, summer national service program that does all of the following:

1. Undertakes meaningful service projects with visible public benefits, including natural resources, urban renovation and human resources projects.

2. Includes as participants persons who have attained the age of 16 years but who have not attained the age of 26 years, including youths who are not enrolled in school and other disadvantaged youths.

3. Provides those participants with crew−based, highly structured and adult−supervised work experience, life skills training, education, career guidance and counseling, employment training and support services and with the opportunity to develop citizenship values and skills through service to their community and country.

**(2)** DUTIES OF THE BOARD. The board shall do all of the following:

(a) Prepare and update annually, through an open and public participation process, a plan for the provision of national service programs in this state that covers a 3−year period, that ensures outreach to diverse community−based organizations serving underrepresented populations and that contains such information as the corporation may require.

(b) Prepare applications for financial assistance from the corporation.

(c) Prepare applications for approval by the corporation of national service program positions that are eligible for national service educational awards under 42 USC 12601 and 12604.

(d) Make recommendations to the corporation concerning priorities for programs receiving federal domestic volunteer services assistance under 42 USC 4950 to 5091n.

(e) Provide technical assistance to persons applying for financial assistance from the corporation to enable those persons to plan and implement national service programs.

(f) Assist in providing health care and child care for participants in national service programs.

(g) Provide a system for the recruitment and placement of participants in national service programs and disseminate information to the public concerning national service programs and positions in national service programs.

(h) From the appropriations under s. 20.505 (4) (j) and (p), award grants to persons providing national service programs, giving priority to the greatest extent practicable to persons providing youth corps programs.

(i) Provide oversight and evaluation of the national service programs funded under par. (h).

(j) On request, provide projects, training methods, curriculum materials and other technical assistance to persons providing national service programs.

(k) Coordinate its activities with the activities of the corporation and any state agency that administers federal financial assistance under 42 USC 9901 to 9912 or any other federal financial assistance program with which coordination would be appropriate.

(L) Perform such other duties as may be required by the corporation.

**(3)** DELEGATION OF DUTIES. The board may not directly provide a national service program. Subject to any limitations that the corporation may prescribe, the board may delegate any of the duties specified in sub. (2), other than policy−making duties, to another state agency, a public agency or a nonprofit organization.

**(4)** STATE FUNDING. The department shall annually determine the amount of funding for administrative support of the board that is required for this state to qualify for federal financial assistance to be provided to the board. The department shall apportion that amount equally among the departments of administration, health services, public instruction, and workforce development and shall assess those entities for the necessary funding. The department shall credit the moneys received to the appropriation account under s. 20.505 (4) (kb).

**History:** 1993 a. 437, 491; 1995 a. 225; 1997 a. 237; 2007 a. 20 ss. 77, 9121 (6) (a); 2007 a. 97.

**16.25 Service award program. (1)** In this section:

(am) "First responder" means an individual certified under s. 256.15 (8) (a).

(b) "Internal Revenue Code" means the Internal Revenue Code, as defined for the current taxable year under s. 71.01 (6).

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

(d) "Program" means the service award program established under sub. (2).

**(2)** The department shall administer a program to provide length−of−service awards, described in 26 USC 457 (e) (11), to volunteer fire fighters in municipalities that operate volunteer fire departments or that contract with volunteer fire companies organized under ch. 181 or 213, to first responders in any municipality that authorizes first responders to provide first responder services, and to volunteer emergency medical technicians in any municipality that authorizes volunteer emergency medical technicians to provide emergency medical technical services in the municipality. To the extent permitted by federal law, the department shall administer the program so as to treat the length−of−service awards as a tax−deferred benefit under the Internal Revenue Code.

**(3)** The department shall administer the program so as to include all of the following features:

(a) All municipalities that operate volunteer fire departments or that contract with a volunteer fire company organized under ch. 181 or 213, all municipalities that authorize first responders to provide first responder services, and all municipalities that authorize volunteer emergency medical technicians to provide emergency medical technical services are eligible to participate in the program.

(b) Annual contributions in an amount determined by the municipality shall be paid by each municipality for each volunteer fire fighter, first responder, and emergency medical technician who provides services for the municipality.

(c) The municipality may select from among the plans offered by individuals or organizations under contract with the department under sub. (4) for the volunteer fire fighters, first responders, and emergency medical technicians who perform services for the municipality. The municipality shall pay the annual contributions directly to the individual or organization offering the plan selected by the municipality.

(d) 1. Subject to subd. 2., the department shall match all annual municipal contributions paid for volunteer fire fighters, first responders, and emergency medical technicians up to $250 per fiscal year, other than contributions paid for the purchase of additional years of service under par. (e), to be paid from the appropriation account under s. 20.505 (4) (er). This amount shall be adjusted annually on July 1 to reflect any changes in the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, for the 12−month period ending on the preceding December 31. The department shall pay all amounts that are matched under this paragraph to the individuals and organizations offering the plans selected by the municipalities.

2. If the moneys appropriated under s. 20.505 (4) (er) are not sufficient to fully fund the contributions required to be paid by the department under subd. 1., the department shall prorate the contributions paid for the volunteer fire fighters, first responders, and emergency medical technicians.

(e) A municipality may purchase additional years of service for volunteer fire fighters, first responders, and emergency medical technicians. The number of additional years of service that may be purchased under this paragraph may not exceed the number of years of volunteer fire fighting, first responder service, or emergency medical technical service performed by the volunteer fire fighter, first responder, or emergency medical technician for the municipality.

(f) Except in the case of a volunteer fire fighter, first responder, or emergency medical technician or the beneficiary of a volunteer fire fighter, first responder, or emergency medical technician eligible for a lump sum under par. (i), a vesting period of 10 years of volunteer fire fighting, first responder service, or emergency medical technical service for a municipality shall be required before a volunteer fire fighter, first responder, or emergency medical technician may receive any benefits under the program.

(g) A volunteer fire fighter, first responder, or emergency medical technician shall be paid a length of service award either in a lump sum or in a manner specified by rule, consisting of all municipal and state contributions made on behalf of the volunteer fire fighter, first responder, or emergency medical technician and all earnings on the contributions, less any expenses incurred in the investment of the contributions and earnings, after the volunteer fire fighter, first responder, or emergency medical technician attains 20 years of service for a municipality and reaches the age of 60. If a volunteer fire fighter, first responder, or emergency medical technician has satisfied all vesting requirements under the program but has less than 20 years of service for a municipality or has not reached the age of 60, the program shall provide for the payment of a length of service award either in a lump sum or in a manner specified by rule in an amount to be determined by the department, but less than the amount paid to a volunteer fire fighter, first responder, or emergency medical technician who has attained 20 years of service for a municipality and has reached the age of 60.

(h) The account of a volunteer fire fighter, first responder, or emergency medical technician who has not met all of the vesting requirements under the program shall be closed if he or she should cease providing volunteer fire fighting, first responder, or emergency medical technical services for a municipality for a period of 6 months or more, unless he or she has been granted a leave of absence by his or her supervisor.

(i) 1. The beneficiary of a volunteer fire fighter, first responder, or emergency medical technician who is killed in the line of duty or while actively engaged in the rendering of volunteer fire fighting, first responder, or emergency medical technical service shall be paid a length of service award either in a lump sum or in a manner specified by rule, consisting of all municipal and state contributions made on behalf of the volunteer fire fighter, first responder, or emergency medical technician and all earnings on the contributions, less any expenses incurred in the investment of the contributions and earnings.

2. A volunteer fire fighter, first responder, or emergency medical technician who becomes disabled during his or her service as a volunteer fire fighter, first responder, or emergency medical technician for the municipality shall be paid a length of service award either in a lump sum or in a manner specified by rule, in an amount to be determined by the department.

(j) The account of any volunteer fire fighter, first responder, or emergency medical technician who has not met all of the vesting requirements under the program, who has not provided volunteer fire fighting, first responder, or emergency medical technical services for a municipality for a period of 6 months or more, who does not meet any other program requirement established by the municipality, and who has not been granted a leave of absence by his or her supervisor shall be closed.

(k) The department shall equitably allocate all moneys in accounts of volunteer fire fighters, first responders, and emergency medical technicians that have been closed to the accounts of volunteer fire fighters, first responders, and emergency medical technicians that have not been forfeited or closed.

**(4)** (a) The department shall establish by rule the requirements for, and the qualifications of, the individuals and organizations in the private sector that are eligible to provide administrative services and investment plans under the program, other than services funded from the appropriation under s. 20.505 (4) (ec). In establishing the requirements and qualifications, the department shall develop criteria of financial stability that each individual and organization must meet in order to offer the services and plans under the program.

(b) The department may contract with any individual or organization in the private sector that seeks to provide administrative services and investment plans required for the program, other than services funded from the appropriation under s. 20.505 (4) (ec), if the individual or organization fulfills the requirements and has the qualifications established by the department under par. (a). Section 16.72 (2) (b) does not apply to any such contract.

**(5)** The department shall establish by rule a process by which a volunteer fire fighter, first responder, or emergency medical technician may appeal to the secretary any decision made by the department or by an individual or organization under contract with the department under sub. (4) that affects a substantial interest of the volunteer fire fighter, first responder, or emergency medical technician under the program.

**(6)** Annually, on or before December 31, the department shall submit a report to the chief clerk of each house of the legislature under s. 13.172 (2) describing the activities of the department under this section.

**History:** 1999 a. 105; 2005 a. 142; 2007 a. 97, 130; 2015 a. 55.
**Cross−reference:** See also ch. Adm 95, Wis. adm. code.

**16.255 College savings program vendor. (1)** The department shall determine the factors to be considered in selecting a vendor of the program under s. 16.641, which shall include:

(a) The person's ability to satisfy record−keeping and reporting requirements.

(b) The fees, if any, that the person proposes to charge account owners.

(c) The person's plan for promoting the college savings program and the investment that the person is willing to make to promote the program.

(d) The minimum initial contribution or minimum contributions that the person will require.

(e) The ability and willingness of the person to accept electronic contributions.

(f) The ability of the person to augment the college savings program with additional, beneficial services related to the program.

**(2)** The department shall solicit competitive sealed proposals under s. 16.75 (2m) from nongovernmental persons to serve as vendor of the college savings program. The department shall

select the vendor based upon factors determined by the department under sub. (1).

**(3)** The contract between the department and the vendor shall ensure all of the following:

(a) That the vendor reimburses the state for all administrative costs that the state incurs for the college savings program.

(b) That a firm of certified public accountants selected by the vendor annually audits the college savings program and provides a copy of the audit to the college savings program board.

(c) That each account owner receives a quarterly statement that identifies the contributions to the college savings account during the preceding quarter, the total contributions to and the value of the college savings account through the end of the preceding quarter and any distributions made during the preceding quarter.

(d) That the vendor communicate to the beneficiary and account owner the requirements of s. 16.641 (8).

**History:** 1999 a. 44; 2001 a. 38 s. 12; 2011 a. 32.

**16.26 Weatherization assistance.** Notwithstanding s. 16.54 (2) (a), the department shall administer federal funds available to this state under the weatherization assistance for low−income persons program, as amended, 42 USC 6861 to 6873. The department shall administer the funds in accordance with 42 USC 6861 to 6873 and regulations adopted under 42 USC 6861 or 6873.

**History:** 1991 a. 39; 1995 a. 27, 289, 432; 2003 a. 33 s. 163; Stats. 2003 s. 16.26.

**16.27 Low−income energy assistance. (1)** DEFINITIONS. In this section:

(a) "County department" means a county department under s. 46.215 or 46.22.

(am) "Crisis assistance" means a benefit that is given to a household experiencing or at risk of experiencing a heating−related emergency.

(b) "Dwelling" means the residence of a low−income warm room program volunteer.

(bm) "Heating assistance" means a benefit, other than crisis assistance, that is given to a household to assist in meeting the cost of home heating.

(c) "Household" means any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(d) "Low−income warm room program materials" include a removable, insulated radiator blanket, a portable remote control thermostat and other cost−efficient materials or repairs necessary to achieve maximum heating efficiency in a dwelling.

(e) "Low−income warm room program volunteer" means a person who is eligible for assistance under 42 USC 8621 to 8629, whose dwelling, in comparison to the dwellings of other persons eligible for assistance under 42 USC 8621 to 8629, has a high ratio of space to occupant, and who volunteers to take the training under sub. (2) (b) and to cooperate with the department in the installation and operation of low−income warm room program materials in his or her dwelling.

(em) "Utility allowance" means the amount of utility costs paid by those individuals in subsidized housing who pay their own utility bills, as averaged from total utility costs for the housing unit by the housing authority.

**(2)** ADMINISTRATION. (a) The department shall administer low−income energy assistance as provided in this section to assist an eligible household to meet the costs of home energy with low−income home energy assistance benefits authorized under 42 USC 8621 to 8629.

(b) The department shall administer a low−income warm room program to install low−income warm room program materials in the dwellings of low−income warm room program volunteers and to train the low−income warm room program volunteers and the members of each low−income warm room program volunteer's household in the operation of the low−income warm room program materials to achieve maximum health and heating efficiency.

**(3)** FUNDING. Subject to s. 16.54 (2), the department shall, within the limits of the availability of federal funds received under 42 USC 8621 to 8629:

(b) By October 1 of every year from the appropriation under s. 20.505 (1) (mb), determine the total amount available for payment of heating assistance under sub. (6) and determine the benefit schedule.

(c) From the appropriation under s. 20.505 (1) (mb), allocate $1,100,000 in each federal fiscal year for the department's expenses in administering the funds to provide low−income energy assistance.

(d) From the appropriation under s. 20.505 (1) (n), allocate $2,900,000 in each federal fiscal year for the expenses of a county department, another local governmental agency or a private nonprofit organization in administering under sub. (4) the funds to provide low−income energy assistance.

(e) From the appropriation under s. 20.505 (1) (mb):

1. Allocate and transfer to the appropriation under s. 20.505 (1) (n), 15 percent of the moneys received under 42 USC 8621 to 8629 in each federal fiscal year under the priority of maintaining funding for the geographical areas on July 20, 1985, and, if funding is reduced, prorating contracted levels of payment, for the weatherization assistance program administered by the department under s. 16.26.

3. Except as provided under subd. 6., allocate the balance of funds received under 42 USC 8621 to 8629 in a federal fiscal year, after making the allocations under pars. (c) and (d) and subd. 1., for the payment of heating assistance or for the payment of crisis assistance under sub. (6).

6. If federal funds received under 42 USC 8621 to 8629 in a federal fiscal year total less than 90 percent of the amount received in the previous federal fiscal year, submit a plan of expenditure under s. 16.54 (2) (b).

7. By October 1 of each year, allocate funds budgeted but not spent and any funds remaining from previous fiscal years to heating assistance under sub. (6) or to the weatherization assistance program under s. 16.26.

**(4)** APPLICATION PROCEDURE. (a) A household may apply after September 30 and before May 16 of any year for heating assistance from the county department under s. 46.215 (1) (n) or 46.22 (1) (b) 4m. a. to e. or from another local governmental agency or a private nonprofit organization with which the department contracts to administer the heating assistance program, and shall have the opportunity to do so on a form prescribed by the department for that purpose.

(b) If by February 1 of any year the number of households applying under par. (a) substantially exceeds the number anticipated, the department may reduce the amounts of payments made under sub. (6) made after that date. The department may suspend the processing of additional applications received until the department adjusts benefit amounts payable.

**(5)** ELIGIBILITY. Subject to the requirements of subs. (4) (b) and (8), the following shall receive low−income energy assistance under this section:

(b) A household with income which is not more than 60 percent of the statewide median household income.

(c) A household entirely composed of persons receiving aid to families with dependent children under s. 49.19, food stamps under 7 USC 2011 to 2036, or supplemental security income or state supplemental payments under 42 USC 1381 to 1383c or s. 49.77.

(d) A household with income within the limits specified under par. (b) that resides in housing that is subsidized or administered

by a municipality, a county, the state or the federal government in which a utility allowance is applied to determine the amount of rent or the amount of the subsidy.

(e) A household that is not eligible under par. (c) that includes at least one person who is eligible for food stamps under 7 USC 2011 to 2036, excluding any household in an institution, as defined by the department of health services by rule. Notwithstanding sub. (6), a household under this paragraph shall be eligible for a heating assistance benefit of not more than $1.

**(6)** BENEFITS. Within the limits of federal funds allocated under sub. (3) and subject to the requirements of sub. (4) (b) and s. 16.54 (2) (b), heating assistance shall be paid under this section according to a benefit schedule established by the department based on household income, family size and energy costs.

**(7)** INDIVIDUALS IN STATE PRISONS OR SECURED JUVENILE FACILITIES. No payment under sub. (6) may be made to a prisoner who is imprisoned in a state prison under s. 302.01 or to a person placed at a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g).

**(8)** CRISIS ASSISTANCE PROGRAM. A household eligible for heating assistance under sub. (6) may also be eligible for a crisis assistance payment to meet a weather−related or fuel supply shortage crisis. The department shall define the circumstances constituting a crisis for which a payment may be made and shall establish the amount of payment to an eligible household or individual. The department may delegate a portion of its responsibility under this subsection to a county department under s. 46.215 or 46.22 or to another local governmental agency or a private nonprofit organization.

**(9)** NOTICE OF UTILITY DISCONNECTION REQUIRED. Any public utility, as defined in s. 196.01 (5), or any fuel distributor furnishing heat, light or power to a residential customer shall provide written notice of intent to disconnect or discontinue service during the months of November to April and shall include information concerning any federal, state or local program that provides assistance for fuel or home heating bills. The department shall provide printed information at no cost upon request to any fuel distributor serving residential customers except public utilities. The information shall describe the nature and availability of any federal, state or local program that provides assistance for fuel or home heating bills.

**History:** 1985 a. 29 ss. 1055g, 2488h to 2488n; 1985 a. 176, 332; 1987 a. 27; 1989 a. 31, 359; 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 2336, 3182 to 3207; Stats. 1995 s. 16.385; 1995 a. 77, 417; 1999 a. 9; 2003 a. 33 s. 162; Stats. 2003 s. 16.27; 2003 a. 321 s. 11; 2003 a. 327 s. 5; 2005 a. 25, 344; 2009 a. 11, 28.

**16.28 Office of business development. (1)** The office of business development shall provide administrative support to the small business regulatory review board and shall perform other functions determined by the secretary.

**(2)** The deputy director of the office shall be appointed by the governor to serve at his or her pleasure.

**History:** 2011 a. 32.

**16.283 Disabled veteran−owned businesses. (1)** DEFINITIONS. In this section, unless the context requires otherwise:

(a) "Business" means a sole proprietorship, partnership, limited liability company, joint venture, or corporation.

(b) "Disabled veteran" means a person who is verified by the department of veterans affairs as being all of the following at the time the person applies for certification under sub. (3):

1. A veteran, as defined in s. 45.01 (12).

2. A resident of this state.

3. A person who is in receipt of an award from the U.S. department of veterans affairs of a service−connected disability rating under 38 USC 1114 or 1134 of at least 20 percent.

(c) "Duly authorized representative" has the meaning given in s. 45.04 (1) (a).

(d) "Financial adviser" means a business that serves as an adviser with regard to the sale of evidences of indebtedness or other obligations.

(e) "Investment firm" means a business that serves as a manager, comanager, or in any other underwriting capacity with regard to the sale of evidences of indebtedness or other obligations or as a broker−dealer as defined in s. 551.102 (4).

(f) "Useful business function" means the provision of materials, supplies, equipment, or services to customers, including the state.

**(2)** DISABLED VETERAN−OWNED BUSINESS DATABASE. The department shall develop, maintain, and keep current a computer database of businesses certified under this section.

**(3)** DISABLED VETERAN−OWNED BUSINESS, FINANCIAL ADVISER, AND INVESTMENT FIRM CERTIFICATION. (a) Any business, financial adviser, or investment firm may apply to the department for certification under this section.

(b) 1m. The department shall certify a business, financial adviser, or investment firm under this section if, after conducting an investigation, the department determines that the business, financial adviser, or investment firm fulfills all of the following requirements:

a. One or more disabled veterans owns not less than 51 percent of the business, financial adviser, or investment firm or, in the case of any publicly owned business, financial adviser, or investment firm, one or more disabled veterans owns not less than 51 percent of the stock of the business, financial adviser, or investment firm.

b. One or more disabled veterans or one or more duly authorized representatives of one or more disabled veterans controls the management and daily business operations of the business, financial adviser, or investment firm.

c. The business, financial adviser, or investment firm has its principal place of business in this state.

d. The business, financial adviser, or investment firm is currently performing a useful business function. Acting as a conduit for the transfer of funds to a business that is not certified under this section does not constitute a useful business function, unless doing so is a normal industry practice.

2m. The department may, without conducting an investigation, certify a business, financial adviser, or investment firm having its principal place of business in this state and currently performing a useful business function if the business, financial advisor, or investment firm is certified, or otherwise classified, as a disabled veteran−owned business, financial advisor, or investment firm by an agency or municipality of this or another state, a federally recognized American Indian tribe, or the federal government, or by a private business with expertise in certifying disabled veteran−owned businesses if the business uses substantially the same procedures the department uses in making a determination under subd. 1m.

(c) The department may charge each business, financial adviser, or investment firm applying for certification under this section a fee to cover the department's expenses in making the certification determination.

(d) If a business, financial adviser, or investment firm applying for certification under this section fails to provide the department with sufficient information to enable the department to conduct an investigation under par. (b) 1m. or does not qualify for certification under par. (b), the department shall deny the application. A business, financial adviser, or investment firm 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.

(e) 1. The department may, at the request of any state agency or on its own initiative, evaluate any business, financial adviser, or investment firm certified under this section to verify that it continues to qualify for certification. The business, financial adviser,

or investment firm shall provide the department with any records or information necessary to complete the examination.

2. If a business, financial adviser, or investment firm fails to comply with a reasonable request for records or information, the department shall notify the business, financial adviser, or investment firm and the departments of administration and transportation, in writing, that it intends to decertify the business, financial adviser, or investment firm.

3. If, after an evaluation under this paragraph, the department determines that a business, financial adviser, or investment firm no longer qualifies for certification under this section, the department shall notify the business, financial adviser, or investment firm and the departments of administration and transportation, in writing, that it intends to decertify the business, financial adviser, or investment firm.

(f) The business, financial adviser, or investment firm may, within 30 days after a notice is sent under par. (e) 2. or 3., appeal in writing to the secretary. If the business, financial adviser, or investment firm does not submit an appeal under this paragraph, the department shall immediately decertify the business, financial adviser, or investment firm. If an appeal is submitted under this paragraph, the secretary shall enter his or her final decision, in writing, within 30 days after receiving the appeal. If the secretary confirms the decision of the department, the department shall immediately decertify the business, financial adviser, or investment firm. A business, financial adviser, or investment firm decertified under this paragraph may, within 30 days after the secretary's decision, request a contested case hearing under s. 227.42 from the department. If the final administrative or judicial proceeding results in a determination that the business, financial adviser, or investment firm qualifies for certification under this section, the department shall immediately certify the business, financial adviser, or investment firm. The department shall provide the business, financial adviser, or investment firm and the departments of administration and transportation with a copy of the final written decision regarding certification under this paragraph.

**(4)** DEPARTMENT RULE MAKING. The department shall promulgate by administrative rule procedures to implement this section.

**History:** 2009 a. 299 s. 100; 2011 a. 32 s. 3317; Stats. 2011 s. 16.283; 2013 a. 20.

**Cross−reference:** See also ch. Adm 82, Wis. adm. code.

**16.285 Woman−owned businesses; certification; database. (1)** (a) In this subsection, "woman−owned business" means a sole proprietorship, partnership, limited liability company, joint venture, or corporation that fulfills all of the following requirements:

1. It is at least 51 percent owned, controlled, and actively managed by a woman.

2. It is currently performing a useful business function in this state.

(b) The department shall implement a program for the certification of woman−owned businesses. The department may, without conducting an investigation, certify a business currently performing a useful business function in this state as a woman−owned business if the business is certified, or otherwise classified, as a woman−owned business by an agency or municipality of this or another state, a federally recognized American Indian tribe, or the federal government, or by a private business with expertise in certifying woman−owned businesses if the business uses substantially the same process as the department promulgates by rule for implementing this subsection.

(bm) The department may charge an applicant for certification under this subsection a processing fee of not more than $50.

(c) The department shall promulgate rules necessary to implement this subsection.

**(2)** The department shall develop, maintain, and keep current a computer database of businesses in the state that are owned by women, containing demographic statistics and information on the types of industries represented, sales volume and growth rates, generation of jobs by both new and existing businesses, and any other relevant characteristics. The department shall compile and periodically update a list of businesses certified under sub. (1) and make the list available to the public on the Internet.

**History:** 1991 a. 39; 1999 a. 185; 2005 a. 358; 2011 a. 32 s. 3319; Stats. 2011 s. 16.285; 2013 a. 20.

**Cross−reference:** See also ch. Adm 83, Wis. adm. code.

**16.287 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, limited liability company, joint venture or corporation that fulfills both of the following requirements:

a. It is at least 51 percent 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.

(ep) "Minority financial adviser" means a sole proprietorship, partnership, limited liability company, joint venture or corporation that fulfills all of the following requirements:

1. It is at least 51 percent 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).

2. It serves as an adviser with regard to the sale of evidences of indebtedness or other obligations.

(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.

(fm) "Minority investment firm" means a sole proprietorship, partnership, limited liability company, joint venture or corporation that fulfills all of the following requirements:

1. It is at least 51 percent 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).

2. It serves as a manager, comanager or in any other underwriting capacity with regard to the sale of evidences of indebtedness or other obligations or as a broker−dealer as defined in s. 551.102 (4).

(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, ADVISER AND FIRM CERTIFICATION. (a) For the purposes of ss. 16.75 (3m), 16.855 (10m), 16.87 (2), 18.16, 18.64, 18.77, 25.185, 119.495 (2), 200.57, 231.27 and 234.35, the department shall establish and periodically update a list of certified minority businesses, minority financial advisers and minority investment firms. Any business, financial adviser or investment firm may apply to the department for certification. For purposes of this paragraph, unless the context otherwise requires, a "business" includes a financial adviser or investment firm.

(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.

(c) The department, without investigation, 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 or municipality of this or another state, a federally recognized American Indian tribe, 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).

(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 ss. 16.75 (3m), 16.855 (10m), 16.87 (2) and 25.185.

(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.

(e) If a business refuses to provide the department with sufficient information to enable it to conduct an investigation under par. (b) 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.

(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. 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. 227.42 from the department. If the final administrative or judicial proceeding 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, financial adviser or investment firm must comply to qualify for certification, in addition to the qualifications specified under sub. (1) (e), (ep) and (fm), respectively.

**History:** 1983 a. 390; 1985 a. 182 s. 57; 1987 a. 27, 403; 1989 a. 31; 1991 a. 37, 39, 189; 1993 a. 112; 1997 a. 27; 1999 a. 150 s. 672; 2007 a. 196; 2011 a. 32 s. 3320; Stats. 2011 s. 16.287; 2013 a. 20.

**Cross−reference:** See also ch. Adm 84, Wis. adm. code.

**16.29 Technical assistance. (1)** Annually, the department shall grant to the Great Lakes inter−tribal council the amount appropriated under s. 20.505 (1) (kx) to partially fund a program to provide technical assistance for economic development on Indian reservations if the conditions under subs. (2) and (3) are satisfied.

**(2)** (a) As a condition of receiving a grant under sub. (1), the Great Lakes inter−tribal council shall establish a technical assistance program.

(b) The program shall provide technical assistance to all of the following businesses:

1. A tribal enterprise.

2. An Indian business that is located on an Indian reservation.

3. An Indian business that is not located on an Indian reservation but that directly benefits the economy of an Indian reservation.

(c) The program shall provide the following types of technical assistance:

1. Management assistance to existing businesses.

2. Start−up assistance to new businesses, including the development of business and marketing plans and assistance in securing development financing.

3. Technical assistance to new and existing businesses in gaining access to tribal, state and federal business assistance and financing programs.

(d) The program may not provide technical assistance for a commercial gaming and gambling activity.

**(3)** As a condition of receiving a grant under sub. (1), the Great Lakes inter−tribal council annually shall prepare a report on the technical assistance program under sub. (2) and submit the report to the department.

**History:** 1991 a. 39, 261; 1995 a. 27; 1999 a. 9; 2011 a. 32 s. 3442m; Stats. 2011 s. 16.29.

**16.295 Fund of funds investment program. (1)** DEFINITION. In this section, "investment manager" means the person the committee selects under sub. (3) (a) 1.

**(2)** ESTABLISHMENT OF PROGRAM. The department shall establish and administer a program for the investment of moneys in venture capital funds that invest in businesses located in this state.

**(3)** SELECTION OF INVESTMENT MANAGER; CONTRACT APPROVAL. (a) 1. The secretary shall form a committee to select the investment manager. The committee shall consist of 3 representatives of the investment board and 2 representatives, appointed by the secretary, of the capital finance office in the department. The committee shall select a person as investment manager who has expertise in the venture capital or private equity asset class.

2. When the department gives the notice under par. (b) 1., the department shall submit its proposed contract with the investment manager to the legislative audit bureau for review. The legislative

audit bureau shall review the proposed contract and, within 14 days after it receives the proposed contract for review, submit to the joint committee on finance and the department a letter of review that evaluates the terms of the contract and offers an opinion concerning the extent to which the contract conforms with this section and implements subs. (4) to (7).

(b) 1. The secretary shall notify in writing the joint committee on finance of the investment manager selected under par. (a) 1. The notice shall include the department's proposed contract with the investment manager.

2. If, within 14 working days after the date the joint committee on finance receives the legislative audit bureau's letter of review under par. (a) 2., the cochairpersons of the joint committee on finance do not notify the secretary that the committee has scheduled a meeting to determine whether the department's proposed contract with the investment manager is contrary to this section or fails to implement an applicable provision of subs. (4) to (7), the department and investment manager may execute that contract. If, within 14 working days after the date of that notice, the cochairpersons of the committee notify the secretary that the committee has scheduled that meeting, the department and investment manager may execute the contract unless the committee determines at that meeting that the contract, in whole or in part, is contrary to this section or fails to implement an applicable provision of subs. (4) to (7).

**(4)** CONTRACT WITH INVESTMENT MANAGER; DISCLOSURE REQUIREMENT. (a) Subject to sub. (3), the department shall contract with the investment manager. The contract shall establish the investment manager's compensation, including any management fee. Any management fee may not exceed, annually for no more than 4 years, 1 percent of the total moneys designated under sub. (5) (b) 1. and raised under sub. (5) (b) 3.

(b) The investment manager shall disclose to the department any interest that it or an owner, stockholder, partner, officer, director, member, employee, or agent of the investment manager has in a venture capital fund that receives moneys under sub. (5) (b) or a business in which a venture capital fund invests those moneys.

**(5)** INVESTMENTS IN VENTURE CAPITAL FUNDS. (a) Subject to sub. (4) (a), the department shall pay $25,000,000 from the appropriation under s. 20.505 (1) (fm) to the investment manager in fiscal year 2013−14.

(b) The investment manager shall invest the following moneys in at least 4 venture capital funds:

1. The moneys under par. (a).

2. At least $300,000 of the investment manager's own moneys.

3. At least $5,000,000 that the investment manager raises from sources other than the department.

(c) 1. Of the moneys designated under par. (b), the investment manager may not invest more than $10,000,000 in a single venture capital fund.

2. Of the moneys designated under par. (b), the investment manager shall commit at least one−half of those moneys to investments in venture capital funds within 12 months after the date the investment manager executes the contract under sub. (4) (a), and the investment manager shall commit all of those moneys to investments in venture capital funds within 24 months after that date.

(d) The investment manager shall contract with each venture capital fund that receives moneys under par. (b). Each contract shall require the venture capital fund to do all of the following:

1. Make new investments in an amount equal to the moneys it receives under par. (b) in one or more businesses that are headquartered in this state and employ at least 50 percent of their full−time employees, including any subsidiary or other affiliated entity, in this state, and invest at least one−half of those moneys in one or more businesses that employ fewer than 150 full−time employees, including any subsidiary or other affiliated entity, when the venture capital fund first invests moneys in the business under this section. The venture capital fund's contract with a business in which the venture capital fund makes an investment under this subdivision shall require that, if within 3 years after the venture capital fund makes that investment, the business relocates its headquarters outside of this state or fails to employ at least 50 percent of its full−time employees, including any subsidiary or other affiliated entity, in this state, the business shall promptly pay to the venture capital fund an amount equal to the total amount of moneys designated under par. (b) 1. that the venture capital fund invested in the business. The venture capital fund shall reinvest those moneys in one or more businesses that are eligible to receive an investment under this subdivision, subject to the requirements of this section.

2. Commit at least one−half of any moneys it receives under par. (b) to investments in businesses within 24 months after the date it receives those moneys and commit all of those moneys to investments in businesses within 48 months after that date.

3. Invest all of the moneys it receives under par. (b) in businesses in the agriculture, information technology, engineered products, advanced manufacturing, medical devices, or medical imaging industry and attempt to ensure that all of those moneys are invested in businesses that are diverse with respect to geographic location within this state.

4. At least match any moneys it receives under par. (b) and invests in a business with an investment in that business of moneys the venture capital fund has raised from sources other than the investment manager. The investment manager shall ensure that, on average, for every $1 a venture capital fund receives under par. (b) and invests in a business, the venture capital fund invests $2 in that business from sources other than the investment manager.

5. Provide to the investment manager the information necessary for the investment manager to complete the annual report under sub. (7) (a) and the quarterly report under sub. (7) (c).

6. Disclose to the investment manager and the department any interest that the venture capital fund or an owner, stockholder, partner, officer, director, member, employee, or agent of the venture capital fund holds in a business in which the venture capital fund invests or intends to invest moneys received under par. (b).

(e) The investment manager's profit−sharing agreement with each venture capital fund that receives moneys under par. (b) shall be on terms that are substantially equivalent to the terms applicable for other funding sources of the venture capital fund.

**(6)** SPECIAL REQUIREMENTS FOR INVESTMENTS OF MONEYS CONTRIBUTED BY THE STATE. (a) The investment manager shall hold in an escrow account its gross proceeds from all investments of the moneys designated under sub. (5) (b) 1. until the investment manager satisfies par. (b).

(b) At least annually, the investment manager shall pay any moneys held under par. (a) to the secretary for deposit into the general fund until the investment manager has paid a total of $25,000,000 under this paragraph.

(c) After the investment manager satisfies par. (b), the investment manager shall pay 90 percent of its gross proceeds from investments of the moneys designated under sub. (5) (b) 1. to the secretary for deposit into the general fund.

**(7)** REPORTS OF THE INVESTMENT MANAGER; PUBLIC DISCLOSURES. (a) Annually, within 120 days after the end of the investment manager's fiscal year, the investment manager shall submit a report to the department for that fiscal year that includes all of the following:

1. An audit of the investment manager's financial statements performed by an independent certified public accountant.

2. The investment manager's internal rate of return from investments under sub. (5) (b).

3. For each venture capital fund that contracts with the investment manager under sub. (5) (d), all of the following:

a. The name and address of the venture capital fund.

b. The amounts invested in the venture capital fund under sub. (5) (b).

c. An accounting of any fee the venture capital fund paid to itself or any principal or manager of the venture capital fund.

d. The venture capital fund's average internal rate of return on its investments of the moneys it received under sub. (5) (b).

4. For each business in which a venture capital fund held an investment of moneys the venture capital fund received under sub. (5) (b), all of the following:

a. The name and address of the business.

b. A description of the nature of the business.

c. An identification of the venture capital fund that made the investment in the business.

d. The amount of each investment in the business and the amount invested by the venture capital fund from funding sources other than the investment manager.

e. The internal rate of return realized by the venture capital fund upon the venture capital fund's exit from the investment in the business.

f. A statement of the number of employees the business employed when the venture capital fund first invested moneys in the business that the venture capital fund received under sub. (5) (b), the number of employees the business employed on the first day of the investment manager's fiscal year, and the number of employees the business employed on the last day of the investment manager's fiscal year.

(b) No later than 10 days after it receives the investment manager's report under par. (a), the department shall submit the report to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2).

(c) Quarterly, the investment manager shall submit a report to the department for the preceding quarter that includes all of the following:

1. An identification of each venture capital fund under contract with the investment manager under sub. (5) (d).

2. An identification of each business in which a venture capital fund held an investment of moneys the venture capital fund received under sub. (5) (b) and a statement of the amount of the investment in each business that separately specifies the amount of moneys designated under sub. (5) (b) 1. that were contributed to the investment.

3. A statement of the number of employees the business employed when the venture capital fund first invested moneys in the business that the venture capital fund received under sub. (5) (b) and the number of employees the business employed at the end of the quarter.

(d) The department shall make the investment manager's quarterly report under par. (c) readily accessible to the public on the department's Internet site.

**(8)** PROGRESS REPORTS. In 2015 and 2018, no later than March 1, the department shall submit reports to the joint committee on finance that include all of the following:

(a) A comprehensive assessment of the performance to date of the investment program under this section.

(b) Any recommendations the department has for improvement of the investment program under this section and the specific actions the department intends to take or proposes to be taken to implement those recommendations.

(c) Any recommendations the investment board has for improvement of the investment program under this section and the specific actions the investment board proposes to be taken to implement those recommendations.

**(9)** EXEMPTION FROM LOW BID AND CONTRACTUAL SERVICES REQUIREMENTS. Sections 16.705 and 16.75 do not apply to this section.

**History:** 2013 a. 41.

**16.301 Definitions.** In ss. 16.301 to 16.315:

**(1)** "Community−based organization" means an organization operating in a specific geographic area that is organized primarily to provide housing opportunities for persons or families of low or moderate income, and that is one of the following:

(a) A nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17).

(b) A nonprofit cooperative organized under ch. 185 or 193.

(c) A federally recognized American Indian tribe or band in this state or an entity established by a federally recognized American Indian tribe or band.

**(2)** "Housing authority" means any of the following:

(a) A housing authority organized under s. 59.53 (22), 61.73, 66.1201 or 66.1213 or ch. 234.

(b) A redevelopment authority or housing and community development authority exercising the powers of a housing authority under s. 66.1333 (3) or 66.1335 (4).

(c) A housing authority organized by the elected governing body of a federally recognized American Indian tribe or band in this state.

**(3)** "Housing costs" means whichever of the following applies:

(a) For housing occupied by the owner, any of the following:

1. The principal and interest on a mortgage loan that finances the purchase of the housing.

2. Closing costs and other costs associated with a mortgage loan.

3. Mortgage insurance.

4. Property insurance.

5. Utility−related costs.

6. Property taxes.

7. If the housing is owned and occupied by members of a cooperative or an unincorporated cooperative association, fees paid to a person for managing the housing.

(b) For rented housing, any of the following:

1. Rent.

3. Utility−related costs, if not included in the rent.

**(6)** "Utility−related costs" means costs related to power, heat, gas, light, water and sewerage.

**History:** 1989 a. 31; 1991 a. 39; 1995 a. 201; 1997 a. 79; 1999 a. 150 s. 672; 2003 a. 33 s. 151; Stats. 2003 s. 560.9801; 2005 a. 441; 2011 a. 32 s. 3450m; Stats. 2011 s. 16.301; 2013 a. 166.

**Cross−reference:** See also ch. Adm 89, Wis. adm. code.

**16.302 State housing strategy plan. (1)** (a) The department shall prepare a comprehensive 5−year state housing strategy plan. The department shall submit the plan to the federal department of housing and urban development.

(b) In preparing the plan, the department may obtain input from housing authorities, community−based organizations, the private housing industry and others interested in housing assistance and development.

**(2)** The state housing strategy plan shall include all of the following:

(a) A statement of housing policies and recommendations.

(b) An evaluation and summary of housing conditions and trends in this state, including housing stock and housing cost analyses, general population and household composition demographic analyses and housing and demographic forecasts.

(c) An evaluation of housing assistance needs, based in part on the evaluation under par. (b).

(d) A discussion of major housing issues, including housing production, housing and neighborhood conservation, housing for persons with special needs, fair housing and accessibility and housing affordability.

(e) Housing policies that set the general framework for this state's housing efforts.

(f) Strategies for utilizing federal funding and for coordinating federal and state housing efforts.

(g) Specific recommendations for public and private action that contribute to the attainment of housing policies under the plan.

(h) Strategies and specific recommendations for public and private action that will facilitate the inclusion of bicycle−oriented and pedestrian−oriented design in residential developments and mixed−use developments that include residential elements.

**(3)** The department shall annually update the state housing strategy plan.

**(4)** Before October 1 of each year, the department shall submit the state housing strategy plan to the governor and to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2).

**History:** 1991 a. 39; 1997 a. 27; 2003 a. 33 s. 152; Stats. 2003 s. 560.9802; 2009 a. 351; 2011 a. 32 s. 3451m; Stats. 2011 s. 16.302.

**16.303 Housing cost grants and loans. (1)** The department shall do all of the following:

(a) Subject to sub. (2), make grants or loans, directly or through agents designated under s. 16.304, from the appropriation under s. 20.505 (7) (b) to persons or families of low or moderate income to defray housing costs of the person or family.

(b) Determine the rate of interest, repayment terms or any other term of a loan made under this section.

(c) Set minimum standards for housing that is occupied by a person or family of low or moderate income who receives a grant or loan under this section.

**(2)** In connection with grants and loans under sub. (1), the department shall do all of the following:

(a) Base the amount of the grant or loan on the ratio between the recipient's housing costs and income.

(c) Ensure that the funds for the grants and loans are reasonably balanced among geographic areas of this state.

(d) Ensure that the funds for the grants and loans are reasonably balanced among the varying housing needs of persons or families of low or moderate income.

(e) Give priority for grants and loans to all of the following:

1. Homeless individuals and families.

2. Elderly persons.

3. Physically disabled persons.

5. Families in which at least one minor child but only one parent live together.

6. Families with 4 or more minor children living together.

7. Other persons or families that the department determines have particularly severe housing problems.

**(3)** (a) The department may make grants or loans under sub. (1) (a) directly or through agents designated under s. 16.304.

(b) The department may administer and disburse funds from a grant or loan under sub. (1) (a) on behalf of the recipient of the grant or loan.

**History:** 1989 a. 31; 1991 a. 39; 2001 a. 109; 2003 a. 33 s. 153; Stats. 2003 s. 560.9803; 2011 a. 32 s. 3452m; Stats. 2011 s. 16.303.

**Cross−reference:** See also ch. Adm 89, Wis. adm. code.

**16.304 Designated agents. (1)** The department may enter into an agreement with an agent designated under sub. (2) to allow the designated agent to do any of the following:

(a) Award grants and loans under s. 16.303 (1) and (2) subject to the approval of the department.

(b) Disburse the funds for grants and loans to persons or families of low or moderate income on terms approved by the department.

(c) On terms approved by the department, administer and disburse funds from a grant or loan under s. 16.303 on behalf of the recipient of the grant or loan.

**(2)** The department may designate any of the following as agents:

(a) The governing body of a county, city, village or town.

(b) The elected governing body of a federally recognized American Indian tribe or band in this state.

(c) A housing authority.

(d) A nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17).

(e) A cooperative organized under ch. 185 or 193, if the articles of incorporation, articles of organization, or bylaws of the cooperative limit the rate of dividend that may be paid on all classes of stock.

(f) A religious society organized under ch. 187.

(g) An organization operated for profit.

**History:** 1989 a. 31; 1991 a. 39 ss. 120, 121; Stats. 1991 s. 16.334; 1997 a. 27, 79; 2003 a. 33 s. 154; Stats. 2003 s. 560.9804; 2005 a. 441; 2011 a. 32 s. 3453m; Stats. 2011 s. 16.304.

**Cross−reference:** See also ch. Adm 89, Wis. adm. code.

**16.305 Grants to local housing organizations. (1)** The department may make grants to a community−based organization, organization operated for profit, or housing authority to improve the ability of the community−based organization, organization operated for profit, or housing authority to provide housing opportunities, including housing−related counseling services, for persons or families of low or moderate income. The grants may be used to partially defray any of the following:

(a) Salaries, fringe benefits and other expenses associated with personnel of the housing authority, organization operated for profit or community−based organization.

(b) Administrative or operating costs, not described in par. (a).

**(2)** The department may not make a grant under sub. (1) unless all of the following apply:

(a) The housing authority, organization operated for profit or community−based organization submitted an application for a grant.

(b) The housing authority, organization operated for profit or community−based organization equally matches the grant, by cash or by other assets in kind.

(c) The department determines that the grant to the particular community−based organization, organization operated for profit, or housing authority is appropriate because of any of the following:

1. The quality of the management of the community−based organization, organization operated for profit or housing authority.

2. The amount of other resources for providing housing opportunities that are available to the community−based organization, organization operated for profit or housing authority.

3. The potential impact of the planned activities of the community−based organization, organization operated for profit or housing authority on housing opportunities for persons of low and moderate income in the area.

4. The financial need of the community−based organization, organization operated for profit or housing authority.

**(3)** A community−based organization, organization operated for profit or housing authority may receive grants under both sub. (1) (a) and (b).

**(4)** To ensure the development of housing opportunities, the department shall coordinate the use of grants provided under this section with projects undertaken by housing authorities, organizations operated for profit, and community−based organizations.

**History:** 1989 a. 31; 1991 a. 39 s. 124; Stats. 1991 s. 16.336; 1997 a. 27; 2003 a. 33 s. 155; Stats. 2003 s. 560.9805; 2011 a. 32 s. 3454m; Stats. 2011 s. 16.305.

**Cross−reference:** See also ch. Adm 88, Wis. adm. code.

**16.306 Transitional housing grants. (1)** DEFINITIONS. In this section:

(a) "Eligible applicant" means any of the following:

1. A county or municipal governing body.

2. A county or municipal governmental agency.

3. A community action agency under s. 49.265.

4. A private, nonprofit organization.

5. An organization operated for profit.

(b) "Transitional housing" means housing and supportive services for homeless persons that is designed to facilitate the movement of homeless persons to independent living.

**(2)** GRANTS. (a) From the appropriation under s. 20.505 (7) (fm), the department may award a grant to an eligible applicant for the purpose of providing transitional housing and associated supportive services to homeless individuals and families if the conditions under par. (b) are satisfied. The department shall ensure that the funds for the grants are reasonably balanced among geographic areas of the state, consistent with the quality of applications submitted.

(b) A recipient of a grant under par. (a) shall agree to use the grant to support a transitional housing program that does all of the following:

1. Utilizes only existing buildings.

2. Utilizes buildings at scattered sites.

3. Facilitates the utilization, by residents, of appropriate social services available in the community.

4. Provides, or facilitates the provision of, training in self–sufficiency to residents.

5. Requires that at least 25 percent of the income of residents be spent for rent.

6. Permits persons to reside in transitional housing facilities for a period not to exceed 24 months.

**(3)** REPORTING. Each recipient of a grant under this section shall annually provide all of the following information to the department:

(a) The total number of persons served.

(b) The length of stay in transitional housing of each person served.

(c) The housing and employment status of each person served, at the time that the person leaves the transitional housing program.

(d) Any other information that the department determines to be necessary to evaluate the effectiveness of the transitional housing program operated by the recipient.

**History:** 1991 a. 39, 269; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33 s. 156; Stats. 2003 s. 560.9806; 2007 a. 20; 2011 a. 32 ss. 3455m to 3456m; Stats. 2011 s. 16.306; 2013 a. 166 s. 76.

**Cross−reference:** See also ch. Adm 87, Wis. adm. code.

**16.307 Grants to alleviate homelessness. (1)** GRANTS. From moneys available under s. 20.505 (7) (h), the department shall make grants to organizations, including organizations operated for profit, that provide shelter or services to homeless individuals or families.

**(2)** SUPPLEMENTAL FUNDS. The department shall ensure that grants awarded under sub. (1) are not used to supplant other state funds available for homelessness prevention or services to homeless individuals or families.

**(2m)** REPORT. Annually, the department shall submit a report to the speaker of the assembly, the president of the senate and to the appropriate standing committees under s. 13.172 (3) that summarizes how much money was received in the previous year and how that money was distributed.

**(3)** RULES. The department shall promulgate rules establishing procedures and eligibility criteria for grants under this section.

**History:** 1993 a. 33; 1997 a. 27; 2003 a. 33 s. 158; Stats. 2003 s. 560.9807; 2011 a. 32 s. 3457m; Stats. 2011 s. 16.307.

**Cross−reference:** See also ch. Adm 87, Wis. adm. code.

**16.308 Grants for the provision of shelter for homeless individuals and families. (1)** DEFINITIONS. In this section:

(a) "Current operating budget" means the budget for the calendar or fiscal year during which an application is submitted, including all sources and amounts of revenue and all actual and planned expenditures.

(b) "Eligible applicant" means any of the following:

1. A county or municipal governing body.

2. A county or municipal governmental agency.

3. A community action agency.

4. A private nonprofit organization, as defined under s. 108.02 (19), or a nonstock corporation that is organized under ch. 181 and that is a nonprofit corporation, as defined in s. 181.0103 (17).

5. A federally recognized American Indian tribe or band.

6. A housing and community development authority.

7. An organization operated for profit.

(c) "Proposed operating budget" means the budget proposed for the calendar or fiscal year following the year in which an application is submitted, including all anticipated revenue other than the amount sought in the grant application and all planned expenditures.

(d) "Shelter facility" means a temporary place of lodging for homeless individuals or families.

**(2)** (a) From the appropriations under s. 20.505 (7) (fm) and (h), the department shall award grants to eligible applicants for the purpose of supplementing the operating budgets of agencies and shelter facilities that have or anticipate a need for additional funding because of the renovation or expansion of an existing shelter facility, the development of an existing building into a shelter facility, the expansion of shelter services for homeless persons, or an inability to obtain adequate funding to continue the provision of an existing level of services.

(b) The department shall allocate funds from the appropriations under s. 20.505 (7) (fm) and (h) for temporary shelter for homeless individuals and families as follows:

1. At least $400,000 in each year to eligible applicants located in Milwaukee County.

2. At least $66,500 in each year to eligible applicants located in Dane County.

3. At least $100,000 in each year to eligible applicants not located in Milwaukee County or Dane County.

4. In addition to the amounts under subds. 1. to 3., no more than $183,500 in each year to eligible applicants without restriction as to the location of the applicants.

**(3)** APPLICATION. (a) An eligible applicant which is not located in Dane County or Milwaukee County may submit an application for one of the following:

1. A grant of not more than 50 percent of the current or proposed operating budget of a shelter facility operated by the applicant.

2. A grant of not more than 50 percent of the portion of the applicant's current or proposed operating budget allocated for providing homeless individuals with vouchers that may be exchanged for temporary shelter.

(am) An eligible applicant located in Dane County or Milwaukee County may submit an application for one of the following:

3. A grant of not more than 50 percent of the total current or proposed operating budgets of one or more shelter facilities from which the applicant purchases shelter for homeless persons and to which the applicant will distribute the money it receives under conditions described in the application.

4. A grant of not more than 50 percent of the total current or proposed operating budgets of 2 or more shelter facilities which the applicant represents and to which the applicant will distribute the money received under conditions described in the application.

(b) Applications shall be submitted in the form required by the department and shall be accompanied by the current or proposed operating budget or both, as required by the department, of each

shelter facility or agency that will, directly or indirectly, receive any of the grant money, and an explanation of why the shelter facility or agency has or anticipates a need for additional funding.

**(3m)** GRANT ELIGIBILITY. In awarding grants under this section, the department shall consider whether the community in which an eligible applicant provides services has a coordinated system of services for homeless individuals and families.

**(4)** RULE MAKING REQUIRED. The department shall promulgate by rule both of the following:

(a) Criteria for awarding grants.

(b) Criteria for determining whether an agency that operates a shelter facility or program is eligible for a grant.

**(5)** PROHIBITED USES. The department may not provide a grant for any of the following purposes:

(a) The construction of a new shelter facility.

(b) The operation of a shelter care facility licensed under ch. 48.

(c) The operation of a facility or private home providing shelter for victims of domestic abuse.

(d) The operation of an agency that provides only information, referral or relocation services.

**History:** 1985 a. 29, 276; 1987 a. 27, 399; 1989 a. 31; 1991 a. 39 s. 1378; Stats. 1991 s. 16.352; 1993 a. 16, 374; 1995 a. 27; 1997 a. 27, 79; 2001 a. 16; 2003 a. 33 s. 159; Stats. 2003 s. 560.9808; 2011 a. 32 s. 3458m; Stats. 2011 s. 16.308.

**Cross−reference:** See also ch. Adm 86, Wis. adm. code.

**16.309 Community development block grant programs. (1)** The department may administer programs, including the housing improvement grant program, the initial rehabilitation grant program, the community development grant program, and the revolving loan fund program, that are funded by a community development block grant, 42 USC 5301 to 5320.

**(2)** The department may promulgate rules to administer this section.

**(3)** Notwithstanding sub. (2), the department shall promulgate rules that specify that an applicant for funds under a program under this section shall be eligible to receive funds under the program in the year following the year for which the applicant submits an application, without having to submit another application for that following year, if all of the following apply:

(a) The applicant is an eligible applicant under the terms of the program.

(b) The applicant did not receive funds under the program in the year for which the application was submitted.

**History:** 1991 a. 39; 1995 a. 27 s. 9116 (5); 1997 a. 27; 2003 a. 33 s. 160; Stats. 2003 s. 560.9809; 2011 a. 32 s. 3459m; Stats. 2011 s. 16.309; 2013 a. 20.

**Cross−reference:** See also chs. Adm 90 and 93, Wis. adm. code.

**16.310 Use of surplus state−owned real property. (1)** DEFINITIONS. In this section "state agency" means an office, commission, department, or independent agency in the executive branch of state government.

**(2)** TRANSFER OF REAL PROPERTY TO THE DEPARTMENT. (a) The department shall petition the head of any state agency having jurisdiction over real property that the department determines to be suitable for surplus.

(b) The head of the state agency having jurisdiction over the real property shall notify the department in writing whether or not the state agency considers the real property to be surplus.

(c) If the state agency considers the real property to be surplus, if the department determines that the real property is suitable by, the state agency shall transfer the real property, without payment, to the department for purposes of transfer to an applicant under sub. (3).

**(3)** TRANSFER OF REAL PROPERTY. The department may transfer real property obtained under sub. (2) to an applicant under a written agreement that includes a provision that the applicant agrees to pay the department an amount to utilize the real property in conformance with the agreement.

**(4)** RECORDING. The department shall record the agreement under sub. (3) in the office of the register of deeds for the county in which the real property subject to the agreement is located.

**(5)** NONAPPLICATION. This section does not apply to property that is authorized to be sold or leased as provided in s. 16.848 while an offer of sale, sale, or lease agreement is pending or while the property is leased.

**History:** 1991 a. 39; 2001 a. 103; 2003 a. 33 s. 161; Stats. 2003 s. 560.9810; 2005 a. 25; 2011 a. 32 s. 3460m; Stats. 2011 s. 16.310; 2013 a. 20.

**16.311 Mental health services. (1)** In this section, "serious and persistent mental illness" has the meaning given in s. 51.01 (14t).

**(2)** From the appropriation under s. 20.505 (7) (fr), the department may not award more than $45,000 in each fiscal year to applying public or nonprofit private entities for the costs of providing certain mental health services to homeless individuals with serious and persistent mental illness. Entities that receive funds awarded by the department under this subsection shall provide the mental health services required under 42 USC 290cc−24. The amount that the department awards to an applying entity may not exceed 50 percent of the amount of matching funds required under 42 USC 290cc−23.

**History:** 2005 a. 25 s. 908; 2005 a. 264; 2007 a. 45; 2011 a. 32 s. 3461m; Stats. 2011 s. 16.311.

**16.315 Federal housing assistance programs.** Notwithstanding s. 16.54 (2) (a), the department shall administer federal funds made available to this state under the Stewart B. McKinney homeless assistance act housing assistance programs, 42 USC 11361 to 11402.

**History:** 1991 a. 39; 2003 a. 33 s. 157; Stats. 2003 s. 560.9815; 2011 a. 32 s. 3462m; Stats. 2011 s. 16.315.

## SUBCHAPTER III

## FINANCE

**16.40 Department of administration, duties, powers.** The department of administration shall:

**(1)** PREPARE BUDGET. Discharge all duties in connection with the compilation of the biennial state budget report imposed by ss. 16.42 to 16.46.

**(2)** ATTEND FINANCE COMMITTEE. Attend all public hearings of the joint committee on finance and such executive meetings as the committee may desire, answer questions and give information called for by the committee relative to the financial operations of the state and its several agencies.

**(3)** PREPARE ANNUAL FINANCIAL STATEMENT. Prepare at the end of each fiscal year not later than October 15, a condensed, and popular account of the finances of the state, showing the sources of the state's revenue and the purposes of its expenditures, including a comparison with the prior year; prepare at the end of each fiscal year not later than October 15, a statement of the condition of the general fund showing the cash balance, the accounts receivable, the accounts payable and the continuing unexpended and unencumbered appropriation balances; and prepare not earlier than January 1 nor later than February 1 in each year a tentative statement of the estimated receipts and disbursements of the general fund for the biennium in progress, showing also the estimated condition of the general fund at the end of the current biennium. A copy of each of such statements shall be filed in the legislative reference bureau and shall be sent to each member of the legislature.

**(4)** FURNISH INFORMATION. Furnish such other information regarding the finances of the state and the financial operations of agencies as may be called for by the governor, the governor−elect, the legislature or either house thereof, or any member thereof.

**(5)** BOOKKEEPING FORMS. Prescribe the forms of accounts and other financial records to be used by all agencies. Such accounts

shall be as nearly uniform as is practical, and as simple as is consistent with an accurate and detailed record of all receipts and disbursements and of all other transactions affecting the acquisition, custodianship and disposition of value. The secretary may call upon the state auditor for advice and suggestions in prescribing such forms.

**(6)** TAKE TESTIMONY. In the discharge of any duty imposed by law, administer oaths and take testimony and cause the deposition of witnesses to be taken in the manner prescribed for taking depositions in civil actions in circuit courts.

**(7)** COLLECT REVENUE INFORMATION. Collect from any available source and correlate information concerning any and all anticipated state revenues, including program revenues and segregated revenues from program receipts.

**(8)** COLLECT INFORMATION ON DISBURSEMENTS. Collect and correlate information from all agencies concerning any agency disbursements and the proper time thereof.

**(9)** FORECAST REVENUES AND EXPENDITURES. Forecast all revenues and expenditures of the state.

**(10)** DETERMINE MINIMUM CASH BALANCES. Determine the minimum cash balances needed in public depositories in which operating accounts are maintained at all times to meet the operating requirements of all agencies.

**(11)** ADVISE INVESTMENT BOARD DIRECTOR ON SURPLUS MONEYS. Advise the executive director of the investment board daily concerning surplus moneys available for investment from each of the various state funds.

**(12)** ADVISE INVESTMENT BOARD DIRECTOR ON CASH NEEDS. Advise the executive director of the investment board concerning the date when invested funds will be required in the form of cash. Said director shall furnish such reports of investments as may be required by the department of administration.

**(13)** COOPERATE IN IMPROVEMENTS OF STATE FUND MANAGEMENT. Cooperate with the executive director of the investment board, the state treasurer, the department of revenue and other revenue agencies for the purpose of effecting improvements in the management and investment of state funds.

**(14)** COMMITTEES. Perform administrative services required to properly account for the finances of committees created by law or executive order. The governor may authorize each committee to make expenditures from the appropriation under s. 20.505 (1) (ka) not exceeding $2,000 per fiscal year. The governor shall report such authorized expenditures to the joint committee on finance at the next quarterly meeting of the committee. If the governor desires to authorize expenditures of more than $2,000 per fiscal year by a committee, the governor shall submit to the joint committee on finance for its approval a complete budget for all expenditures made or to be made by the committee. The budget may cover a period encompassing more than one fiscal year or biennium during the governor's term of office. If the joint committee on finance approves a budget authorizing expenditures of more than $2,000 per fiscal year by such a committee, the governor may authorize the expenditures to be made within the limits of the appropriation under s. 20.505 (1) (ka) in accordance with the approved budget during the period covered by the budget. If after the joint committee on finance approves a budget for such a committee the governor desires to authorize expenditures in excess of the authorized expenditures under the approved budget, the governor shall submit a modified budget for the committee to the joint committee on finance. If the joint committee on finance approves a modified budget, the governor may authorize additional expenditures to be made within the limits of the appropriation under s. 20.505 (1) (ka) in accordance with the modified budget during the period covered by the modified budget.

**(16)** MAINTAIN AN ACCOUNTING FOR OPERATING NOTES. Maintain an accounting of, forecast and administer those moneys pledged for the repayment of operating notes issued under subch. III of ch. 18, in accordance with agreements entered into by the secretary under s. 16.004 (9).

**(17)** INTERSTATE BODIES. Perform administrative services required to properly account for dues and related expenses for state participation in national or regional interstate governmental bodies specified in s. 20.505 (1) (ka) or determined by the governor.

**(18)** REQUIRE AGENCIES TO PROVIDE COPIES. Require each state agency, at the time that the agency submits a request to the department for an increased appropriation to be provided in an executive budget bill which is necessitated by the compensation plan under s. 230.12 or a collective bargaining agreement approved under s. 111.92, to provide a copy of the request to the administrator of the division of personnel management in the department and the joint committee on employment relations.

**(19)** STATE–OWNED RENTAL HOUSING. Require each agency as defined in s. 16.52 (7) which has a program revenue or segregated revenue appropriation for deposit of housing receipts to deposit all revenues received from rentals established under s. 16.004 (8) for state−owned housing in that appropriation account, or if the appropriation is for more than one purpose, in a separate subaccount within that appropriation, and to pay all expenses for maintenance of the housing from that account or subaccount.

**(20)** PUBLIC DEBT SERVICE COSTS PROJECTION. Prepare in each odd−numbered year for inclusion in the report submitted by the building commission under s. 13.48 (7) a projection of the long−term trends in principal and interest costs on public debt contracted under subchs. I and IV of ch. 18 as a proportion of all tax revenues that are deposited or are expected to be deposited in the general fund. The projection shall take account of the recommendations adopted by the building commission for the long−range building program under s. 13.48 (7) for the succeeding fiscal biennium and all proposed general obligation bonding contained in the executive budget bill or bills, including bonding for the authorized state building program as well as for other borrowing purposes.

**(21)** ADMINISTRATIVE SERVICES PROVIDED TO THE BOARD OF COMMISSIONERS OF PUBLIC LANDS. Render an accounting to the board of commissioners of public lands for the costs of all administrative services provided by the department and other state agencies, as defined in s. 20.001 (1), to the board. All moneys received from the board under s. 24.64 for the costs of administrative services provided by the department and other state agencies shall be deposited in the general fund.

**(22)** SALE OF FOREST PRODUCTS AT FORT MCCOY. (a) Annually distribute an amount equal to 50 percent of the amount appropriated under s. 20.505 (1) (ng) to the school districts located in whole or in part in Monroe County in proportion to the number of pupils in each such school district's membership, as defined in s. 121.004 (5), in the previous school year who were residents of that county in the previous school year.

(b) Annually distribute an amount equal to 50 percent of the amount appropriated under s. 20.505 (1) (ng) to Monroe County for the benefit of the public roads in Monroe County.

**(23)** UNIVERSITY OF WISCONSIN–GREEN BAY PROGRAMMING. Provide funding from the appropriation under s. 20.505 (1) (km) to finance programming at the University of Wisconsin−Green Bay that is jointly developed by the Oneida Tribe and the University of Wisconsin−Green Bay.

**History:** 1971 c. 125; 1977 c. 196 s. 130 (3); 1977 c. 272; 1979 c. 1, 34, 221; 1981 c. 20, 27, 317; 1981 c. 390 s. 252; 1983 a. 27, 368, 524; 1985 a. 29; 1987 a. 4, 27; 1989 a. 31, 359; 1991 a. 39; 1993 a. 16; 1999 a. 9, 24, 185; 2001 a. 16, 109; 2003 a. 33 ss. 164, 9160; 2005 a. 25; 2007 a. 20; 2015 a. 55.

**16.401 Treasury management.** The department shall:

**(1)** HAVE CUSTODY OF MONEYS. Receive and have charge of all moneys paid into the treasury and any other moneys received by officers and employees of state agencies, and pay out the moneys

as directed by law, except as provided in ss. 16.52 (7), 20.907 (5) (b), 20.920, and 20.929.

**(2)** ISSUE RECEIPTS. Issue receipts for all money paid to the department.

**(3)** PAY CLAIMS AS PRESENTED. Pay all claims authorized to be paid out of the treasury in the order in which they are presented, giving a preference to no one.

**(4)** PAY ON WARRANTS SUMS AUTHORIZED BY LAW. (a) Pay out of the treasury, on demand, upon the warrants of the department, except as provided in s. 20.929, such sums only as are authorized by law to be so paid, if there are appropriate funds therein to pay the same, and, when any sum is required to be paid out of a particular fund, pay it out of such fund only; and upon each such warrant, when payment is made in currency, take the receipt endorsed on or annexed thereto, of the payee therein named or an authorized agent or assignee. The secretary shall accept telephone advice believed by him or her to be genuine from any public depository, as defined in s. 34.01 (5), stating that a specified amount of money has been deposited with such public depository for the credit of the state, and shall act upon such telephone advice as though it had been in writing.

(b) When in the judgment of the secretary balances in state public depository accounts are temporarily in excess of that required under par. (a), the secretary may transfer the excess balance to the investment fund for the purpose of investment only. The earnings attributable to the investment of temporary excess balances shall be distributed as provided in sub. (14).

**(5)** ACCOUNT FOR INTEREST. Pay into the treasury and account for all sums directly or indirectly received by the secretary by virtue of the secretary's office, or as interest or compensation for the use, deposit, or forbearance of any state moneys in the secretary's hands or under the secretary's control.

**(6)** KEEP CASH AND FUND ACCOUNTS. Keep records showing the number, date, and amount of each cash receipt issued by the department and classify said receipts by state funds; submit a summary statement of collections by fund together with a copy of each remittance advice in support thereof; keep also records showing the check, share draft, or other draft number, date, payee, and amount of each cash disbursement and classify said disbursements by state funds; keep a record of the date, payee, and amount of each disbursement made by a money transfer technique other than a check or draft and classify the disbursement by state fund; and verify at the end of each week the amounts shown by the secretary's records to represent total cash balance and cash balances of individual state funds by comparing said amounts with corresponding balances appearing on records maintained by the department.

**(7)** REPORT TO GOVERNOR MONTHLY. Report to the governor monthly, or oftener if the governor so requires, on:

(a) The total amount of funds in the treasury, specifying in what kind of currency they consist, the amount of each kind, and the amount belonging to each separate fund.

(b) The amounts in each of the state depositories, together with the interest earned thereon.

(c) Any defalcation or neglect of duty of any disbursing or collecting officer or agent of the state.

**(8)** SUBMIT BIENNIAL REPORT. As part of the report submitted under s. 15.04 (1) (d), include a statement showing for each of the 2 preceding fiscal years the cash balance in each state fund at the beginning of the fiscal year, the aggregate amount of receipts credited, and the aggregate amount of disbursements charged to each said fund during the fiscal year and the resultant cash balance in each state fund at the end of the fiscal year. This statement shall further show as of the end of each said 2 fiscal years, at par, the aggregate value of securities held for each state fund and the aggregate value of securities held in trust or deposited for safekeeping, and shall show the manner in which the total cash balance was accounted for by listing the balances on deposit in each state account in a public depository, deducting from the total of such balances the aggregate amount of checks, share drafts, or other drafts outstanding and adding thereto the aggregate amount of cash and cash items in office.

**(9)** REPORT CERTAIN PAYMENTS. Whenever the secretary or any state department shall remit to any county, city, town, or village any sum in payment of a state aid or other item, the remitter shall transmit a statement of the amount and purpose thereof to the clerk of such municipality. After the receipt thereof, the clerk of such municipality shall present such statement at the next regular meeting of the governing body and shall thereafter file and keep such statement for 6 years.

**(10)** STAMP CHECKS AND DRAFTS. Cause to be plainly printed or stamped upon each check, share draft, and other draft issued by the secretary the period of time, as determined by the secretary but not to exceed one year, during which the check or other draft may be presented for payment. The secretary shall cancel on his or her records any check or other draft that is not presented for payment within the prescribed time period and shall credit the amount thereof to the fund upon which it is drawn.

**(11)** PROVIDE SERVICES IN CONNECTION WITH SECURITIES HELD IN TRUST. Upon request therefor from any company, corporation, society, order, or association that has securities on deposit with the secretary, in trust, mail to its address not to exceed 60 days before the same become due, any or all interest coupons; return to it any or all bonds, notes, or other deposits as they become due and are replaced by other securities; cut all interest coupons, make any endorsement of interest or otherwise on any such securities; and collect therefor from the company, corporation, society, order, or association making the request, a 25−cent fee for a single coupon cut, or for each entry of interest endorsed on a note or return of a bond, note, or other security, and a 10−cent fee for each additional coupon cut, or entry of interest endorsed on a note, bond, or other security, and may withhold any and all coupons cut or refuse endorsement of interest on securities until such fee is paid. Such fees shall be paid into the state treasury as a part of the general fund, and an extra charge may be required for postage or registered mail.

**(12)** HOLD SAFEKEEPING RECEIPTS FOR FEDERAL SECURITIES. Whenever any federal securities are purchased under authority of any law and the secretary is custodian thereof the secretary may accept and hold safekeeping receipts of a federal reserve bank for such securities. Each such receipt shall be identified on its face with the name of the fund to which the securities described in the receipt belong.

**(13)** SALE OF INVESTMENTS. Whenever the department draws a check, share draft, or other draft dated the next following business day upon a fund whose investment and collection is under the exclusive control of the investment board pursuant to s. 25.17 (1), and the receipts of the state are insufficient to permit a disbursement from said fund in the amount of such check, share draft, or other draft, the investment board shall sell investments owned by such fund for delivery in time to provide sufficient money to cover such check, share draft, or other draft on the date that it bears.

**(14)** APPORTION INTEREST. Apportion at least quarterly the interest earned on state moneys in all depositories among the several funds as provided in s. 25.14 (3), except that earnings attributable to the investment of temporary excess balances under sub. (4) (b) shall be distributed according to a formula prescribed by the depository selection board. To the maximum extent deemed administratively feasible by the depository selection board, the formula shall approximate the distribution of earnings among funds which would occur if earnings were allocated in proportion to each fund's actual contribution to the earnings. Interest so apportioned shall be added to and become a part of such funds.

**(15)** REPORT FEES AND SURCHARGES. Report annually to the legislature the amount of money collected by municipal and circuit courts as costs, fees, fines, forfeitures, and surcharges imposed under ch. 814.

**History:** 2003 a. 33 ss. 55 to 60, 62 to 68, 165, 166; 2003 a. 139 s. 2d.

**16.405 Requests for issuance of operating notes.** **(1)** At any time the department determines that a deficiency will occur in the funds of the state which will not permit the state to meet its operating obligations in a timely manner, it may prepare a request for the issuance of operating notes under subch. III of ch. 18 and, subject to subs. (2) and (3), may submit the request to the building commission.

**(2)** The department may not submit a request to the building commission under sub. (1) unless the request is signed by the secretary and the governor.

**(3)** If the department proposes to submit a request to the building commission under sub. (1), the secretary shall notify the joint committee on finance in writing of the proposed action. If the cochairpersons of the committee do not notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the proposed submission within 14 working days after the date of the secretary's notification, the department may submit the request to the building commission as proposed. If, within 14 working days after the date of the secretary's notification, the cochairpersons of the committee notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the proposed submission, the department may submit the request to the building commission only upon approval of the committee.

**History:** 1983 a. 3; 1985 a. 29; 1997 a. 27.

**16.41 Agency and authority accounting; information; aid.** **(1)** All agencies shall keep their accounts and other financial records as prescribed by the secretary under s. 16.40 (5), except as otherwise specifically directed by law. All agencies and authorities shall furnish to the secretary all information relating to their financial transactions which the secretary requests pursuant to this subchapter for such periods as the secretary requests, and shall render such assistance in connection with the preparation of the state budget report and the budget bill and in auditing accounts, as the secretary or the governor may require.

**(2)** The secretary and his or her duly authorized employees shall have free access to all financial accounts of every agency and authority, and each agency and authority shall assist the secretary in preparing estimates of receipts and expenditures for inclusion in the state budget report.

**(3)** Upon request of the secretary all agencies and authorities shall furnish such information concerning anticipated revenues and expenditures as the secretary requires for effective control of state finances.

**(4)** In this section, "authority" means a body created under subch. II of ch. 114 or under ch. 231, 233, 234, 237, 238, or 279.

**History:** 1977 c. 196 s. 130 (3); 1977 c. 272, 273; 1983 a. 27; 1987 a. 399; 1995 a. 27; 2001 a. 16; 2005 a. 74, 335; 2007 a. 20, 97; 2009 a. 28; 2011 a. 7, 10; 2013 a. 20.

**16.412 Agency payments.** At the request of any agency, the secretary may authorize the processing of specified regular periodic payments through the use of money transfer techniques including, without limitation because of enumeration, direct deposit, electronic funds transfer, and automated clearinghouse procedures.

**History:** 1981 c. 20; 2003 a. 33.

**16.413 Disclosure of expenditures relating to state agency operations and state agency contracts and grants.** **(1)** DEFINITIONS. In this section:

(a) "Financial instrument" includes any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or credit card, transaction authorization mechanism, marketable security, and any computer representation of them.

(b) "Grant" means a payment made to a person, other than aids to individuals and organizations and local assistance and the payment of salaries and fringe benefits for state employees.

(c) "Searchable Internet Web site" means a Web site that allows any person to search for both of the following:

1. State aggregate expenditures for state operations by state agency, expenditure category, expenditure amount, and the person to whom the expenditure is made.

2. Grants made by state agencies and contracts entered into by state agencies.

(d) "State agency" has the meaning given in s. 20.001 (1).

(e) "State operations" means all purposes except aids to individuals and organizations and local assistance.

**(2)** STATE AGENCY EXPENDITURES FOR STATE OPERATIONS. (a) The department shall ensure that all state agency expenditures for state operations exceeding $100, including salaries and fringe benefits paid to state agency employees, are available for inspection on a searchable Internet Web site maintained by the department. Copies of each financial instrument relating to these expenditures, other than payments relating to state employee salaries, shall be available for inspection on the searchable Internet Web site.

(b) The department shall categorize the expenditure information under par. (a) by state agency, expenditure category, expenditure amount, and the person to whom the expenditure is made. If any of the expenditure information may be found on other Web sites, the department shall ensure that the information is accessible through the searchable Internet Web site under par. (a).

(c) State agencies shall provide the department with all expenditure information required under par. (a). The department may specify the format in which state agencies provide the expenditure information.

**(3)** STATE AGENCY CONTRACTS AND GRANTS. (a) The department shall ensure that all of the following information relating to each grant made by a state agency or contract entered into by a state agency is available for inspection on a searchable Internet Web site maintained by the department:

1. A copy of the contract and grant award.

2. The state agency making the grant or entering into the contract.

3. The name and address of the person receiving the grant or entering into the contract.

4. The purpose of the grant or contract.

5. The amount of the grant or the amount the state agency must expend under the contract and the name of the state fund from which the grant is paid or moneys are expended under the contract.

(b) State agencies shall provide the department with all of the information required under par. (a). The department may specify the format in which state agencies provide the information. The department shall make the information available on the searchable Internet Web site.

**History:** 2011 a. 32.

**16.415 Certification of payrolls.** **(1)** Neither the secretary nor any other fiscal officer of this state may draw, sign, or issue, or authorize the drawing, signing, or issuing of any warrant on any disbursing officer of the state to pay any compensation to any person in the classified service of the state unless an estimate, payroll, or account for such compensation, containing the names of every person to be paid, bears the certificate of the appointing authority that each person named in the estimate, payroll, or account has been appointed, employed, or subject to any other personnel transaction in accordance with, and that the pay for the person has been established in accordance with, the law, compensation plan, or applicable collective bargaining agreement, and applicable rules of the administrator of the division of personnel management in the department and the director of the bureau of merit recruitment and selection in the department then in effect.

**(2)** Any person entitled to be certified as described in sub. (1), as having been appointed or employed in pursuance of law and of the rules pursuant thereto, and refused such certificate, may maintain an action of mandamus to compel the appointing authority to issue such certificate.

**(3)** Any sums paid contrary to this section may be recovered from any appointing authority making such appointments in contravention of law or of the rules promulgated pursuant thereto, or from any appointing authority signing or countersigning or authorizing the signing or countersigning of any warrant for the payment of the same, or from the sureties on the official bond of any such appointing authority, in an action in the circuit court for any county within the state, maintained by the administrator of the division of personnel management in the department, or by a citizen resident therein, who is assessed for, and liable to pay, or within one year before the commencement of the action has paid, a state, city or county tax within this state. All moneys recovered in any action brought under this section when collected, shall be paid into the state treasury except that if a citizen taxpayer is plaintiff in any such action he or she shall be entitled to receive for personal use the taxable cost of such action and 5 percent of the amount recovered as attorney fees.

**History:** 1971 c. 270 ss. 67, 68; 1973 c. 12; 1977 c. 196 ss. 63, 65, 130 (5), 131; 1977 c. 272 s. 98; 1977 c. 273; 1983 a. 27; 1985 a. 332 s. 251 (1); 1989 a. 31; 2003 a. 33 ss. 169 to 171, 9160; 2003 a. 320; 2015 a. 55.

**16.417 Dual employment or retention. (1)** In this section:

(a) "Agency" means an office, department, independent agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, that is entitled to expend moneys appropriated by law, including the legislature and the courts.

(b) "Authority" means a body created under subch. II of ch. 114 or ch. 231, 232, 233, 234, 237, 238, or 279.

(c) "Elective state official" has the meaning given in s. 13.62 (6).

**(2)** (a) No individual other than an elective state official who is employed or retained in a full−time position or capacity with an agency or authority may hold any other position or be retained in any other capacity with an agency or authority from which the individual receives, directly or indirectly, more than $12,000 from the agency or authority as compensation for the individual's services during the same year.

(b) No elective state official may hold any other position or be retained in any other capacity with an agency or authority, except an unsalaried position or unpaid service with an agency or authority that is compatible with the official's duties, the emoluments of which are limited to reimbursement for actual and necessary expenses incurred in the performance of duties.

(c) No agency or authority may employ any individual or enter into any contract in violation of this subsection.

(d) The department shall annually check to assure that no individual violates this subsection. The department shall order any individual whom it finds to be in violation of this subsection to forfeit that portion of the economic gain that the individual realized in violation of this subsection.

(e) The attorney general, when requested by the department, shall institute proceedings to recover any forfeiture incurred under this subsection which is not paid by the individual against whom it is assessed.

(f) This subsection does not apply to any of the following:

1. An individual other than an elective state official who has a full−time appointment for less than 12 months, during any period of time that is not included in the appointment.

2. An individual who is employed by the Board of Regents of the University of Wisconsin System, but only with respect to compensation received within the system.

**History:** 1987 a. 365 ss. 1, 4m; 1987 a. 399; 1989 a. 56 s. 259; 1993 a. 362; 1997 a. 27; 2001 a. 16; 2005 a. 74, 335; 2007 a. 20; 2009 a. 28; 2011 a. 7, 10, 32, 229; 2013 a. 20 ss. 65p, 2365m, 9448; 2013 a. 165.

Restrictions that sub. (2) imposes on dual state employment of state employees are discussed. 77 Atty. Gen. 245.

**16.42 Agency requests. (1)** All agencies, other than the legislature and the courts, no later than September 15 of each even−numbered year, in the form and content prescribed by the department, shall prepare and forward to the department and to the legislative fiscal bureau the following program and financial information:

(a) A clear statement of the purpose or goal for each program or subprogram.

(b) Clear statements of specific objectives to be accomplished and, as appropriate, the performance measures used by the agency to assess progress toward achievement of these objectives.

(c) Proposed plans to implement the objectives and the estimated resources needed to carry out the proposed plans.

(d) A statement of legislation required to implement proposed programmatic and financial plans.

(e) All fiscal or other information relating to such agencies that the secretary or the governor requires on forms prescribed by the secretary.

(g) The information required under s. 16.529 (2).

**(2)** The secretary may make budget estimates for all such agencies which fail to furnish the information required under sub. (1) by the date specified in sub. (1).

**(3)** The department of safety and professional services shall include in its agency request under sub. (1) a proposal to eliminate any council, board, or commission that has not held a meeting since the preceding September 15, unless the council, board, or commission is required to exist under federal law.

**(4)** (a) In this subsection, "state operations" has the meaning given in s. 16.413 (1) (e).

(b) Each agency required to submit a budget request under sub. (1) shall include with its request, and shall submit to the governor and to the legislature under s. 13.172 (2), all of the following:

1. A proposal to reduce the agency's state operations budget for each fiscal year of the succeeding fiscal biennium by an amount equal to a total of 5 percent of the agency's base level for its state operations budget for the current fiscal year. An agency's base level shall be agreed to by the secretary of administration and the director of the legislative fiscal bureau.

2. A proposal to maintain during each fiscal year of the succeeding fiscal biennium the agency's base level for its state operations budget for the current fiscal year. An agency's base level shall be agreed to by the secretary of administration and the director of the legislative fiscal bureau.

(c) For purposes of the proposals under par. (b) 1. and 2., an agency shall exclude from its state operations budget all of the following:

1. Expenditures funded by federal revenues.

2. Expenditures for principal, interest, and premium costs on public debt and state−issued revenue bonds.

3. Expenditures under s. 20.505 (1) (bq), (br), (iq), (it), and (iw).

4. Expenditures under s. 20.855 (1) (a) and (b).

5. Standard budget adjustments, as agreed to by the secretary of administration and the director of the legislative fiscal bureau.

**History:** 1971 c. 125, 215; 1973 c. 12, 333; 1975 c. 388; 1977 c. 29; 1977 c. 196 s. 130 (3), (4); 1977 c. 272; 1979 c. 34, 221; 1981 c. 20; 1987 a. 4; 1993 a. 16; 2001 a. 109; 2003 a. 33; 2005 a. 149; 2009 a. 28; 2013 a. 20; 2015 a. 55, 201; s. 35.17 correction in (4) (a).

**16.425 Summary of tax exemption devices. (1)** DECLARATION OF POLICY. Because state policy objectives are sought and achieved by both governmental expenditures and tax exemption, and because both have an impact on the government's capacity to lower tax rates or raise expenditures, both should receive regular comprehensive review by the governor and the legislature in the budgetary process. This section seeks to facilitate such comprehensive review by providing for the generation of information concerning tax exemptions and other similar devices comparable to expenditure information.

**(2)** DEFINITION. For the purposes of this section "tax exemption device" means any tax provision which exempts, in whole or

in part, certain persons, income, goods, services, or property from the impact of established taxes, including, but not limited because of failure of enumeration, to those devices known as tax deductions, tax allowances, tax exclusions, tax credits and tax exemptions.

**(3)** REPORT ON TAX EXEMPTION DEVICES. The department of revenue shall, in each even−numbered year on the date prescribed for it by the secretary, furnish to the secretary a report detailing the approximate costs in lost revenue, the policy purposes and to the extent possible, indicators of effectiveness in achieving such purposes, for all state tax exemption devices, including those based on the internal revenue code, in effect at the time of the report. The report need relate only to chs. 71, 76 and 77 tax exemption devices and to property tax exemptions for which reports are required under s. 70.337. The report shall be prepared in such a manner as to facilitate the making of comparisons with the information reported in s. 16.46 (1) to (6).

**History:** 1973 c. 90; 1981 c. 20; 1983 a. 27; 1991 a. 39; 1993 a. 490.

**16.43 Budget compiled.** The secretary shall compile and submit to the governor or the governor−elect and to each person elected to serve in the legislature during the next biennium, not later than November 20 of each even−numbered year, a compilation giving all of the data required by s. 16.46 to be included in the state budget report, except the recommendations of the governor and the explanation thereof. The secretary shall not include in the compilation any provision for the development or implementation of an information technology development project for an executive branch agency that is not consistent with the strategic plan of the agency, as approved under s. 16.976. The secretary may distribute the budget compilation in printed or optical disc format.

**History:** 1977 c. 29; 1981 c. 20; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2015 a. 196.

**16.44 Budget hearings.** After the filing of the compilation required under s. 16.43, the governor or governor−elect shall consider all requests and all other information which may be of value in understanding the issues and problems to be dealt with in the executive budget. The governor or governor−elect may hold public hearings determined to be necessary to gather further information from agencies, interested citizens and others. The department of administration and all other agencies shall cooperate fully with the governor or governor−elect in providing information and analyses as requested.

**History:** 1973 c. 333; 1977 c. 196 s. 130 (3); 1977 c. 273.

**16.45 Budget message to legislature.** In each regular session of the legislature, the governor shall deliver the budget message to the 2 houses in joint session assembled. Unless a later date is requested by the governor and approved by the legislature in the form of a joint resolution, the budget message shall be delivered on or before the last Tuesday in January of the odd−numbered year. With the message the governor shall transmit to the legislature, as provided in ss. 16.46 and 16.47, the biennial state budget report and the executive budget bill or bills together with suggestions for the best methods for raising the needed revenues. The governor may distribute the biennial state budget report in printed or optical disc format or post the biennial state budget report on the Internet, except that, if requested by a member of the legislature, the governor shall provide the member with a printed copy of the biennial state budget report.

**History:** 1971 c. 2; 1973 c. 333; 1987 a. 4, 186; 1993 a. 16; 2005 a. 25; 2009 a. 28; 2015 a. 196.

**16.46 Biennial budget, contents.** The biennial state budget report shall be prepared by the secretary, under the direction of the governor, and a copy of a budget−in−brief thereof shall be furnished to each member of the legislature or posted on the Internet on the day of the delivery of the budget message. The biennial state budget report shall be furnished to each member of the legislature or posted on the Internet on the same day. If requested by a member of the legislature, the governor shall provide the member with a printed copy of the budget−in−brief and the biennial state budget report. The biennial state budget report shall contain the following information:

**(1)** A summary of the actual and estimated receipts of the state government in all operating funds under existing laws during the current and the succeeding bienniums, classified so as to show the receipts by funds, organization units and sources of income.

**(2)** A summary of the actual and estimated disbursements of the state government from all operating funds during the current biennium and of the requests of agencies and the recommendations of the governor for the succeeding biennium.

**(3)** A statement showing the condition of all operating funds of the treasury at the close of the preceding fiscal year and the estimated condition at the close of the current year.

**(4)** A statement showing how the total estimated disbursements during each year of the succeeding biennium compare with the estimated receipts, and the additional revenues, if any, needed to defray the estimated expenses of the state.

**(5)** A statement of the actual and estimated receipts and disbursements of each department and of all state aids and activities during the current biennium, the departmental estimates and requests, and the recommendations of the governor for the succeeding biennium. Estimates of expenditures shall be classified to set forth such expenditures by funds, organization units, appropriation, object and activities at the discretion of the secretary.

**(5m)** A statement of estimated general purpose revenue receipts and expenditures in the biennium following the succeeding biennium based on recommendations in the budget bill or bills.

**(6)** Any explanatory matter which in the judgment of the governor or the secretary will facilitate the understanding by the members of the legislature of the state financial condition and of the budget requests and recommendations.

**(7)** The report of the department of revenue prepared under s. 16.425, together with the purposes and approximate costs in lost revenue of each new or changed tax exemption device provided in the proposed budget. This information shall be integrated with the rest of the information in this section in such a manner as to facilitate to the fullest extent possible, direct comparisons between expenditure information and tax exemption device information, as defined in s. 16.425.

**(8)** The estimate of the department of revenue under s. 73.03 (36).

**(9)** A comparison of the state's budgetary surplus or deficit according to generally accepted accounting principles, as reported in any audited financial report prepared by the department for the most recent fiscal year, and the estimated change in the surplus or deficit based on recommendations in the biennial budget bill or bills. For the purpose of this calculation, the secretary shall increase or decrease the surplus or deficit by the amount designated as "Gross Balances" that appears in the 2nd year of the biennium in the summary in s. 20.005 (1), as published in the biennial budget bill or bills.

**History:** 1971 c. 125; 1973 c. 90; 1977 c. 196 s. 130 (3); 1979 c. 34; 1981 c. 20; 1983 a. 27; 1989 a. 335; 1993 a. 16; 1999 a. 83; 2001 a. 16, 109; 2005 a. 25; 2009 a. 28.

**16.461 Biennial budget, summary of funds.** After the governor has submitted all budget recommendations, the secretary shall prepare a summary of the recommendations of all funds, to be distributed to the members of the legislature.

**16.465 Budget stabilization fund reallocations.** The secretary may reallocate moneys in the budget stabilization fund to other funds in the manner provided in s. 20.002 (11). No interest may be assessed to the general fund on account of such a reallocation.

**History:** 1985 a. 120.

**16.47 Budget bill. (1)** Except as provided in s. 16.529 (2), the executive budget bill or bills shall incorporate the governor's recommendations for appropriations for the succeeding biennium. The appropriation method shown in the bill or bills shall in no way affect the amount of detail or manner of presentation which may be requested by the joint committee on finance. Appropriation requests may be divided into 3 allotments: personal services, other operating expenses and capital outlay or such other meaningful classifications as may be approved by the joint committee on finance.

**(1m)** Immediately after the delivery of the budget message, the budget bill or bills shall be introduced without change into either house by the joint finance committee and when introduced shall be referred to that committee.

**(2)** No bill containing an appropriation or increasing the cost of state government or decreasing state revenues in an annual amount exceeding $10,000 shall be passed by either house until the budget bill has passed both houses; except that the governor or the joint committee on finance may recommend such bills to the presiding officer of either house, in writing, for passage and the legislature may enact them, and except that the senate or assembly committee on organization may recommend to the presiding officer of its respective house any such bill not affecting state finances by more than $100,000 biennially. Such bills shall be accompanied by a statement to the effect that they are emergency bills recommended by the governor, the joint committee on finance, or the senate or assembly committee on organization. Such statement by the governor or joint committee on finance shall be sufficient to permit passage prior to the budget bill. Such statement by the senate or assembly committee on organization shall be effective only to permit passage by its respective house.

**History:** 1971 c. 125; 1979 c. 34, 221; 1981 c. 20; 1983 a. 27; 1987 a. 4; 2003 a. 33.

**16.48 Unemployment reserve financial statement. (1)** (a) No later than April 15 of each odd−numbered year, the secretary of workforce development shall prepare and furnish to the governor, the speaker of the assembly, the minority leader of the assembly, and the majority and minority leaders of the senate a statement of unemployment insurance financial outlook, which shall contain the following, together with the secretary's recommendations and an explanation for such recommendations:

1. Projections of unemployment insurance operations under current law through at least the 2nd year following the close of the biennium, including benefit payments, tax collections, borrowing or debt repayments and amounts of interest charges, if any.

2. Specific proposed changes in the laws relating to unemployment insurance financing, benefits and administration.

3. Projections specified in subd. 1. under the proposed laws.

4. The economic and public policy assumptions upon which the projections are based, and the impact upon the projections of variations from those assumptions.

5. If significant cash reserves in the unemployment reserve fund are projected throughout the forecast period, a statement giving the reasons why the reserves should be retained in the fund.

6. If unemployment insurance program debt is projected at the end of the forecast period, the reasons why it is not proposed to liquidate the debt.

(b) No later than May 15 of each odd−numbered year, the secretary of workforce development shall prepare and furnish to the governor, the speaker of the assembly, the minority leader of the assembly, and the majority and minority leaders of the senate a report summarizing the deliberations of the council on unemployment insurance and the position of the council, if any, concerning each proposed change in the unemployment insurance laws submitted under par. (a).

**(2)** Upon receipt of the statement and report under sub. (1), the governor may convene a special committee consisting of the secretary of workforce development and the legislative leaders specified in sub. (1) to review the statement and report. Upon request of 2 or more of the legislative leaders specified in sub. (1), the governor shall convene such a committee. The committee shall attempt to reach a consensus concerning proposed changes to the unemployment insurance laws and shall submit its recommendations to the governor and legislature concurrently with the statement furnished under sub. (3).

**(3)** No later than June 15 of each odd−numbered year, the secretary of workforce development, under the direction of the governor, shall submit to each member of the legislature an updated statement of unemployment insurance financial outlook which shall contain the information specified in sub. (1) (a), together with the governor's recommendations and an explanation for such recommendations, and a copy of the report required under sub. (1) (b).

**History:** 1983 a. 388; 1995 a. 27 s. 9130 (4); 1997 a. 3, 39; 2013 a. 36.

**16.50 Departmental estimates. (1)** EXPENDITURES. (a) Each department except the legislature and the courts shall prepare and submit to the secretary an estimate of the amount of money which it proposes to expend, encumber or distribute under any appropriation in ch. 20. The department of administration shall prepare and submit estimates for expenditures from appropriations under ss. 20.855, 20.865, 20.866 and 20.867. The secretary may waive the submission of estimates of other than administrative expenditures from such funds as he or she determines, but the secretary shall not waive submission of estimates for expenditure of any amount designated as a refund of an expenditure under s. 20.001 (5). Estimates shall be prepared in such form, at such times and for such time periods as the secretary requires. Revised and supplemental estimates may be presented at any time under rules promulgated by the secretary.

(b) This subsection does not apply to appropriations under ss. 20.255 (2) (ac), 20.835, and 20.865 (4).

**(2)** ACTION THEREON BY SECRETARY. The secretary shall examine each such estimate to determine whether appropriations are available therefor and expenditures under the appropriations can be made without incurring danger of exhausting the appropriations before the end of the appropriation period and whether there will be sufficient revenue to meet such contemplated expenditures except as provided in sub. (7). The secretary also shall examine each estimate to assure as nearly as possible that the proposed plan of program execution reflects the intentions of the joint committee on finance, legislature and governor, as expressed by them in the budget determinations. If satisfied that such estimate meets these tests, the secretary shall approve the estimate; otherwise he or she shall disapprove the estimate, in whole or in part, as the facts require. If the secretary is satisfied that an estimate for any period is more than sufficient for the execution of the normal functions of a department, he or she may modify or withhold approval of the estimate. This section shall be strictly construed by the secretary to the end that such budget determinations and policy decisions reflected by such determinations be implemented to the fullest extent possible within the concepts of proper management.

**(3)** LIMITATION OF FORCE AND SALARIES. (a) No department, except the legislature or the courts, may increase the pay of any employee, expend money, or incur any obligation except in accordance with the estimate that is submitted to the secretary as provided in sub. (1) and approved by the secretary or the governor.

(b) No change in the number of full−time equivalent positions authorized through the biennial budget process or other legislative act may be made without the approval of the joint committee on finance, except for position changes made by the governor under s. 16.505 (1) (c), (2), or (2j), by the investment board under s. 16.505 (2g), or by the board of regents of the University of Wisconsin System under s. 16.505 (2m) or (2p).

(c) The secretary may withhold, in total or in part, the funding for any position, as defined in s. 230.03 (11), as well as the funding for part−time or limited term employees until such time as the secretary determines that the filling of the position or the expending

of funds is consistent with s. 16.505 and with the intent of the legislature as established by law or in budget determinations, or the intent of the joint committee on finance in creating or abolishing positions under s. 13.10, the intent of the governor in creating or abolishing positions under s. 16.505 (1) (c) or (2), or the intent of the board of regents of the University of Wisconsin System in creating or abolishing positions under s. 16.505 (2m) or (2p). Until the release of funding occurs, recruitment or certification for the position may not be undertaken.

(d) The secretary shall submit a quarterly report to the joint committee on finance of any position changes made by the governor under s. 16.505 (1) (c).

(e) No pay increase may be approved unless it is at the rate or within the pay ranges prescribed in the compensation plan or as provided in a collective bargaining agreement under subch. V of ch. 111.

(f) At the request of the administrator of the division of personnel management in the department, the secretary of administration may authorize the temporary creation of pool or surplus positions under any source of funds if the director determines that temporary positions are necessary to maintain adequate staffing levels for high turnover classifications, in anticipation of attrition, to fill positions for which recruitment is difficult. Surplus or pool positions authorized by the secretary shall be reported quarterly to the joint committee on finance in conjunction with the report required under s. 16.54 (8).

**(4)** APPEALS TO GOVERNOR. Any department feeling itself aggrieved by the refusal of the secretary to approve any estimate, or any item therein, may appeal from the secretary's decision to the governor, who, after a hearing and such investigation as the governor deems necessary, may set aside or modify such decision.

**(5)** DISBURSEMENTS. The secretary may not draw a warrant for payment of any expenditures incurred by any department nor may any department make any expenditure for which the approval of the secretary or the governor is necessary under this section, including any expenditure under s. 20.867, unless the expenditure was made in accordance with an estimate submitted to and approved by the secretary or by the governor. In the event that the secretary determines that previously authorized expenditures will exceed revenues in the current or forthcoming fiscal year by more than 0.5 percent of the estimated general purpose revenue appropriations for that fiscal year, he or she may not decline to approve an estimate or to draw a warrant under this subsection, but shall instead proceed under sub. (7).

**(6)** PROPORTIONAL SPENDING. If the secretary determines that expenditures of general purpose or segregated fund revenues are utilized to match revenues received under s. 16.54 or 20.001 (2) (b) for the purposes of combined program expenditure, the secretary may require that disbursements of the general purpose revenue and corresponding segregated revenue be in direct proportion to the amount of program revenue or corresponding segregated revenue which is available or appropriated in ch. 20 or as condition of a grant or contract. If the secretary makes such a determination, the agency shall incorporate the necessary adjustments into the expenditure plans provided for in sub. (1).

**(7)** REVENUE SHORTFALL. (a) If following the enactment of the biennial budget act in any biennium the secretary determines that previously authorized expenditures will exceed revenues in the current or forthcoming fiscal year by more than one−half of one percent of the estimated general purpose revenue appropriations for that fiscal year, he or she may not take any action under sub. (2) and shall immediately notify the governor, the presiding officers of each house of the legislature and the joint committee on finance.

(b) Following such notification, the governor shall submit a bill containing his or her recommendations for correcting the imbalance between projected revenues and authorized expenditures, including a recommendation as to whether moneys should be transferred from the budget stabilization fund to the general fund. If the legislature is not in a floorperiod at the time of the secretary's notification, the governor shall call a special session of the legislature to take up the matter of the projected revenue shortfall and the governor shall submit his or her bill for consideration at that session.

**History:** 1971 c. 270; 1973 c. 333; 1975 c. 39; 1977 c. 29, 196, 418; 1979 c. 32, 34; 1981 c. 20, 27, 30, 314; 1983 a. 27 ss. 70, 71a, 2202 (42); 1985 a. 332 s. 251 (6); 1987 a. 4, 27; 1989 a. 31, 336; 1991 a. 316; 1993 a. 16; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33 ss. 173, 174, 9160; 2005 a. 25, 149; 2009 a. 28; 2011 a. 10, 32; 2013 a. 166; 2015 a. 55.

The secretary is not authorized by s. 16.50 (2) to reduce payments to municipalities under s. 79.03, 1979 stats. Milwaukee v. Lindner, 98 Wis. 2d 624, 297 N.W.2d 828 (1980).

The secretary is not authorized by sub. (2) to reduce payments under the school aids program. School District of LaFarge v. Lindner, 100 Wis. 2d 111, 301 N.W.2d 196 (1981).

**16.505 Position authorization. (1)** Except as provided in subs. (2), (2g), (2j), (2m), and (2p), no position, as defined in s. 230.03 (11), regardless of funding source or type, may be created or abolished unless authorized by one of the following:

(a) The legislature by law or in budget determinations.

(b) The joint committee on finance under s. 13.10.

(c) The governor creating or abolishing positions funded from revenues specified in s. 20.001 (2) (e).

**(2)** (a) An agency may request the governor to create or abolish a full−time equivalent position or portion thereof funded from revenues specified in s. 20.001 (2) (b) or (c) in the agency. Upon receiving such a request, the governor may change the authorized level of full−time equivalent positions funded from such revenues in the agency in accordance with this subsection. The governor may approve a different authorized level of positions than is requested by the agency. If the governor proposes to change the number of full−time equivalent positions in an agency funded from revenues specified in s. 20.001 (2) (b) or (c), the governor shall notify the joint committee on finance in writing of his or her proposed action. If the cochairpersons of the committee do not notify the governor that the committee has scheduled a meeting for the purpose of reviewing the proposed action within 14 working days after the date of the governor's notification, the position changes may be made as proposed by the governor. If, within 14 working days after the date of the governor's notification, the cochairpersons of the committee notify the governor that the committee has scheduled a meeting for the purpose of reviewing the proposed action, the position changes may be made under this subsection only upon approval of the committee.

(b) This subsection does not apply to full−time equivalent positions funded from the appropriation under s. 20.370 (2) (bg) or (8) (mg).

**(2g)** The investment board may create or abolish a full−time equivalent position or portion thereof funded from revenues appropriated under s. 20.536 (1) (k).

**(2j)** (a) In this subsection, "executive branch agency" has the meaning given in s. 16.70 (4).

(b) The governor may abolish any vacant full−time equivalent position at any executive branch agency by notifying the joint committee on finance in writing of his or her proposed action. If, within 14 working days after the date of the governor's notification, the cochairpersons of the committee do not notify the governor that the committee has scheduled a meeting for the purpose of reviewing the proposed action, the position changes may be made as proposed by the governor. If, within 14 working days after the date of the governor's notification, the cochairpersons notify the governor that the committee has scheduled a meeting for the purpose of reviewing the proposed action, the position changes may be made only upon approval of the committee.

**(2m)** The board of regents of the University of Wisconsin System or the chancellor of the University of Wisconsin−Madison may create or abolish a full−time equivalent position or portion thereof, other than positions funded from the appropriation under s. 20.285 (1) (a). Beginning on July 1, 2015, all positions authorized for the University of Wisconsin shall not be included in any

state position report. Annually, no later than November 1, the board of regents shall report to the department and the cochairpersons of the joint committee on finance concerning the number of full−time equivalent positions created or abolished by the board under this subsection during the preceding 12−month period and the source of funding for each such position. The report shall be based on the October 1 payroll.

**(2p)** (a) Subject to par. (b), the board of regents of the University of Wisconsin System or the chancellor of the University of Wisconsin−Madison may create or abolish a full−time equivalent academic staff or faculty position or portion thereof from revenues appropriated under s. 20.285 (1) (a). Annually, no later than the September 30 following completion of the fiscal year, the board of regents or chancellor shall report to the department and the cochairpersons of the joint committee on finance concerning the number of full−time equivalent positions created or abolished by the board or chancellor under this subsection during the preceding fiscal year.

(b) The board of regents or chancellor may not create or abolish any position under par. (a) until the board or chancellor and the department have entered into a memorandum of understanding that establishes a methodology for identifying and accounting for the cost of funding any positions that are created, including any amounts that the board or chancellor may include in a certification to the department under s. 20.928 (1). The board or chancellor and the department shall enter into the memorandum of understanding no later than September 1, 2002.

(c) Notwithstanding s. 20.928 (1), in certifying the sum of moneys needed to pay any costs associated with a position that is created under par. (a), the board of regents or chancellor may only certify the sum that is permitted under the memorandum of understanding entered into under par. (b).

(d) Notwithstanding s. 16.42 (1), in submitting information under s. 16.42 for the biennial budget bill or bills, the board of regents or chancellor may only include that portion of the cost of funding the positions created under par. (a) that is permitted under the memorandum of understanding entered into under par. (b).

**(3)** If the secretary determines that the expenditure estimate established under s. 16.50 (1) for any agency so warrants, the secretary may require an agency to seek prior approval to expend funds for any position, including limited term employment. The secretary may also require any agency except a judicial branch agency or legislative service agency to comply with the procedures for entering position information for its employees, including limited term employees, into the information system established under s. 16.004 (7).

**(4)** (a) In this subsection, "agency" has the meaning given under s. 16.52 (7).

(b) Except as provided in par. (c), no agency may change the funding source for a position authorized under this section unless the position is authorized to be created under a different funding source in accordance with this section.

(c) The department shall fund from general purpose revenue under s. 20.865 (1) (cj) positions in the University of Wisconsin System that are otherwise funded from revenues specified in s. 20.001 (2) (e), to the extent authorized under s. 20.865 (1) (cj).

**History:** 1977 c. 196, 418; 1979 c. 34; 1981 c. 20; 1983 a. 27; 1987 a. 27; 1989 a. 31, 127; 1991 a. 39, 269; 1993 a. 16; 1995 a. 27; 1997 a. 27; 2001 a. 16, 109; 2005 a. 25; 2009 a. 28, 276; 2011 a. 10, 32; 2013 a. 20, 166; 2015 a. 55.

**16.51 Department of administration; preauditing and accounting; additional duties and powers.** The department of administration in the discharge of preauditing and accounting functions shall:

**(1)** SUGGEST IMPROVEMENTS. Suggest plans for the improvement and management of the public revenues and expenditures.

**(4)** DIRECT COLLECTION OF MONEYS. Except as otherwise provided by law, direct and superintend the collection of all moneys due the state.

**(5)** KEEP AND STATE ACCOUNTS. Keep and state all accounts in which the state is interested as provided in s. 16.52.

**(6)** AUDIT CLAIMS. Examine, determine and audit, according to law, the claims of all persons against the state as provided in s. 16.53.

**(7)** AUDIT CLAIMS FOR EXPENSES IN CONNECTION WITH PRISONERS AND JUVENILES IN JUVENILE CORRECTIONAL FACILITIES. Receive, examine, determine, and audit claims, duly certified and approved by the department of corrections, from the county clerk of any county in behalf of the county, which are presented for payment to reimburse the county for certain expenses incurred or paid by it in reference to all matters growing out of actions and proceedings involving prisoners in state prisons, as defined in s. 302.01, or juveniles in juvenile correctional facilities, as defined in s. 938.02 (10p), including prisoners or juveniles transferred to a mental health institute for observation or treatment, when the proceedings are commenced in counties in which the prisons or juvenile correctional facilities are located by a district attorney or by the prisoner or juvenile as a postconviction remedy or a matter involving the prisoner's status as a prisoner or the juvenile's status as a resident of a juvenile correctional facility and for certain expenses incurred or paid by it in reference to holding those juveniles in secure custody while those actions or proceedings are pending. Expenses shall only include the amounts that were necessarily incurred and actually paid and shall be no more than the legitimate cost would be to any other county had the offense or crime occurred therein.

**History:** 1971 c. 125; 1977 c. 418; 1979 c. 221; 1985 a. 29; 1989 a. 31; 1995 a. 27, 77; 1997 a. 35; 2005 a. 344.

**16.513 Program and segregated revenue sufficiency.** **(1)** Each agency which has a program revenue appropriation or appropriation of segregated revenues from program receipts shall, at such times as required by the secretary, make quarterly reports to the department projecting the revenues and expenditures for the ensuing quarterly period under each such appropriation to the agency.

**(2)** Upon reviewing the reports submitted under sub. (1), the department shall report to the joint committee on finance concerning any projected insufficiency of program revenues or segregated revenues from program receipts to meet expenditures contemplated by agencies. The report shall contain information concerning any encumbrances made by agencies attributable to a program revenue appropriation or appropriation of segregated revenues from program receipts that are in excess of the moneys, assets or accounts receivable under s. 20.903 (2) required to remove the liabilities created by the encumbrances.

**(3)** (a) If there are insufficient moneys, assets, or accounts receivable, as determined under s. 20.903 (2), that are projected by an agency or projected by the department under s. 16.40 (7) to cover anticipated expenditures under a program revenue appropriation or appropriation of segregated revenues from program receipts, the agency shall propose and submit to the department a plan to assure that there are sufficient moneys, assets, or accounts receivable to meet projected expenditures under the appropriation.

(b) The department may approve, disapprove, or approve with modifications each plan submitted by an agency under par. (a). If the department approves a plan, or approves a plan with modifications, the department shall forward the plan to the joint committee on finance. If the cochairpersons of the joint committee on finance do not notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the proposed plan within 14 working days after the date of the secretary's submittal, any portion of the plan that does not require the action of the legislature or the action of the committee under another law may be implemented. If, within 14 working days after the date of the secretary's submittal, the cochairpersons of the joint committee on finance notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the proposed plan, no part

of the plan may be implemented without the approval of the committee in accordance with applicable law, or without the approval of the legislature if legislative approval is required.

**(4)** The department shall monitor the performance of agencies in carrying out plans approved under sub. (3) and shall periodically report its findings regarding such performance to the joint committee on finance.

**(5)** Any officer of an agency which is responsible for the submission of a report required by sub. (1) or a plan required by sub. (3) who fails to submit the report or plan within the time required by the department may be required to forfeit not less than $200 nor more than $1,000.

**History:** 1983 a. 27; 2005 a. 149; 2011 a. 32.

**16.515 Supplementation of program revenue and program revenue−service appropriations. (1)** The secretary may supplement any sum certain program revenue or program revenue−service appropriation which the secretary determines is insufficient because of unforeseen emergencies or insufficient to accomplish the purpose for which made, if the secretary finds that an emergency exists, no funds are available for such purposes and the purposes for which a supplemental appropriation is requested have been authorized or directed by the legislature. If the secretary proposes to supplement such an appropriation, the secretary shall notify the joint committee on finance in writing of the proposed action. The secretary may proceed with the proposed action if within 14 working days of the notification the committee does not schedule a meeting for the purpose of reviewing the secretary's proposed action. If the committee schedules a meeting for the purpose of reviewing the proposed action, the action shall not take effect unless the committee approves the action.

**(2)** All supplements proposed under this section which are not acted upon by the committee shall be paid from the appropriation under s. 20.865 (8) (g).

**(3)** This section does not apply to supplementation of the appropriation under s. 20.370 (2) (bg) or (8) (mg).

**History:** 1981 c. 20; 1989 a. 31; 1991 a. 269; 1993 a. 16.

**16.517 Adjustments of program revenue positions and funding levels. (1)** No later than 30 days after the effective date of each biennial budget act, the department shall provide to the joint committee on finance a report indicating any initial modifications that are necessary to the appropriation levels established under that act for program revenue and program revenue−service appropriations as defined in s. 20.001 (2) (b) and (c) or to the number of full−time equivalent positions funded from program revenue and program revenue−service appropriations authorized by that act to account for any additional funding or positions authorized under s. 16.505 (2) or (2m) or 16.515 in the fiscal year immediately preceding the fiscal biennium of the budget that have not been included in authorizations under the biennial budget act but that should be included as continued budget authorizations in the fiscal biennium of the budget.

**(2)** Modifications under sub. (1) shall be limited to adjustment of the appropriation or position levels to the extent required to account for higher base levels for the fiscal year immediately preceding the fiscal biennium of the budget due to appropriation or position increases authorized under s. 16.505 (2) or (2m) or 16.515 during the fiscal year immediately preceding the fiscal biennium of the budget.

**(3)** If the cochairpersons of the joint committee on finance do not notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the proposed modifications under sub. (1) within 14 working days after the date of receipt of the department's report, the department may make the modifications specified in the report. If, within 14 working days after the date of the department's report, the cochairpersons of the committee notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the proposed modifications, the department may not make the modifications specified in the report until the committee approves the report.

**History:** 1985 a. 29; 1987 a. 4, 27; 1991 a. 39; 1995 a. 27; 2005 a. 149.

**16.518 Transfers to the budget stabilization fund. (1)** In this section, "summary" means the amount shown in the summary in s. 20.005 (1), as published in the biennial budget act or acts.

**(2)** Annually, the secretary shall calculate the difference between the amount of moneys projected to be deposited in the general fund during the fiscal year that are designated as "Taxes" in the summary and the amount of such moneys actually deposited in the general fund during the fiscal year.

**(3)** (a) Subject to par. (b), if the amount of moneys projected to be deposited in the general fund during the fiscal year that are designated as "Taxes" in the summary is less than the amount of such moneys actually deposited in the general fund during the fiscal year, the secretary shall annually transfer from the general fund to the budget stabilization fund 50 percent of the amount calculated under sub. (2).

(b) 1. If the balance of the budget stabilization fund on June 30 of the fiscal year is at least equal to 5 percent of the estimated expenditures from the general fund during the fiscal year, as reported in the summary, the secretary may not make the transfer under par. (a).

2. If the amount transferred under par. (a) would cause the general fund balance on June 30 of the fiscal year to be less than the general fund balance that is required under s. 20.003 (4) for that fiscal year, the secretary shall reduce the amount transferred under par. (a) to the amount that would cause the general fund balance to be equal to the minimum general fund balance that is required under s. 20.003 (4) for that fiscal year.

**History:** 2001 a. 16; 2007 a. 226.

**16.5185 Transfers to the transportation fund.** Beginning on June 30, 2013, in each fiscal year, the secretary shall transfer from the general fund to the transportation fund the greater of the following:

**(1)** An amount equal to 0.25 percent of the moneys projected to be deposited in the general fund during the fiscal year that are designated as "Taxes" in the summary in s. 20.005 (1), as published in the biennial budget act for that fiscal year.

**(2)** An amount equal to $35,127,000.

**History:** 2011 a. 32.

**16.519 Fund transfers relating to tobacco settlement agreement. (1)** In this section, "tobacco settlement agreement" means the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998.

**(4)** If the state has not received in fiscal year 2002−03 at least $15,345,100 under the tobacco settlement agreement, because the secretary, under s. 16.63, has sold the state's right to receive any of the payments under the tobacco settlement agreement, the secretary shall transfer from the general fund to the tobacco control fund an amount equal to $15,345,100 less any payments received under the tobacco settlement agreement and deposited in the tobacco control fund in that fiscal year.

**History:** 2001 a. 16; 2003 a. 33.

**16.52 Accounting. (1)** KEEP SEPARATE ACCOUNTS. The department shall keep in its office separate accounts of the revenues and funds of the state, and of all moneys and funds received or held by the state, and also of all encumbrances, expenditures, disbursements and investments thereof, showing the particulars of every encumbrance, expenditure, disbursement and investment.

**(2)** REVENUE ACCOUNTS. The department shall place revenue estimates on the books of accounts and credit actual receipts against them as of the last day of each quarter. Except as provided in s. 20.002 (2), any receipts applying to a prior fiscal year

received between the day after the date for closing of books specified by the secretary under sub. (5) (a) and the next succeeding such date specified by the secretary shall be credited by the secretary to the fiscal year following the year to which the receipts apply. Except in the case of program revenue and continuing appropriations, any refund of a disbursement to a general purpose revenue appropriation, applicable to any prior fiscal year, received between these dates may not be credited to any appropriation but shall be considered as a nonappropriated receipt. General purpose revenue (GPR) earned, as defined in s. 20.001 (4) is not available for expenditure, whether or not applied to the fiscal year in which received.

**(3)** KEEP APPROPRIATION ACCOUNTS. The department shall keep separate accounts of all appropriations authorizing expenditures from the state treasury, which accounts shall show the amounts appropriated, the amounts allotted, the amounts encumbered, the amounts expended, the allotments unencumbered and the unallotted balance of each appropriation.

**(5)** ENCUMBRANCES AND CHARGES FOR PRIOR FISCAL YEAR. (a) On a date specified by the secretary within 7 days of July 31 of each fiscal year, all outstanding encumbrances against an appropriation entered for the previous fiscal year shall be transferred by the secretary as encumbrances against the appropriation for the current fiscal year, and an equivalent prior year appropriation balance shall also be forwarded to the current year by the secretary. Payments made on previous year encumbrances forwarded shall be charged to the current fiscal year. All other charges incurred during any previous fiscal year, and not evidenced by encumbrances, which are presented for payment between the day after the date specified by the secretary under this paragraph in any fiscal year and the date specified by the secretary under this paragraph in the next succeeding fiscal year shall be entered as charges in the fiscal year following the year in which the charges are incurred. The requirements of this paragraph may be waived in whole or in part by the secretary with the advice of the state auditor on appropriations other than general purpose revenue appropriations and corresponding segregated revenue appropriations.

(b) After the date specified by the secretary under par. (a), agencies shall be allowed not to exceed one month for reconciling prior year balances, correcting errors and certifying necessary adjustments to the department. No prior year corrections shall be permitted after that date, it being incumbent upon all agencies to completely reconcile their records with the department by that date. Each agency shall delegate to some individual the responsibility of reconciling its accounts as herein provided and shall certify the individual's name to the secretary. As soon as a reconciliation has been effected, the agency shall advise the secretary in writing of such fact and shall forward to the secretary a copy of such reconciliation. If any agency fails to reconcile its accounts as provided in this subsection, the person responsible for such reconciliation shall not be entitled to any further compensation for salary until such reconciliation is effected. With the approval of the state auditor any agency which relies extensively on central accounting records may be permitted by the secretary to file a statement of agreement in lieu of a reconciliation on all or part of its accounts.

(c) In addition to the annual reconcilement of accounts required by par. (b), the secretary may request any state agency to reconcile its accounts with those of the department at such other times as the secretary deems necessary. The manner and form of the reconcilement shall be determined by the secretary.

**(6)** PRIOR APPROVAL OF PURCHASE ORDERS, ETC. (a) Except as authorized in s. 16.74, all purchase orders, contracts, or printing orders for any agency, as defined in s. 16.70 (1e), shall, before any liability is incurred thereon, be submitted to the secretary for his or her approval as to legality of purpose and sufficiency of appropriated and allotted funds therefor. In all cases the date of the contract or order governs the fiscal year to which the contract or order is chargeable, unless the secretary determines that the purpose of the contract or order is to prevent lapsing of appropriations or to otherwise circumvent budgetary intent. Upon such approval, the secretary shall immediately encumber all contracts or orders, and indicate the fiscal year to which they are chargeable.

(b) Pursuant to s. 16.72 and subject to ss. 16.53 and 20.903 local purchases may be made or miscellaneous expenses incurred by any state department.

(c) Any department feeling itself aggrieved by the refusal of the secretary to approve any proposed encumbrance or payment under this section or s. 16.53 may appeal from the secretary's decision to the governor, who, after a hearing and such investigation as the governor deems necessary, may set aside or modify such decision.

**(7)** PETTY CASH ACCOUNT. With the approval of the secretary, each agency that is authorized to maintain a contingent fund under s. 20.920 may establish a petty cash account from its contingent fund. The procedure for operation and maintenance of petty cash accounts and the character of expenditures therefrom shall be prescribed by the secretary. In this subsection, "agency" means an office, department, independent agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, that is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority created in subch. II of ch. 114 or in ch. 231, 233, 234, 237, 238, or 279.

**(8)** REFUND ACCOUNTS. The secretary shall promulgate rules permitting agencies, authorized to do so by the governor, to issue checks, share drafts or other drafts to refund amounts not to exceed $5 each. The secretary may establish petty cash funds for such agencies for the purpose of paying refunds.

**(9)** SECRETARY TO REQUIRE ACCOUNTS OF STATE MONEY, ETC. The secretary shall require all persons receiving money or securities or having the disposition or management of any property of the state, of which an account is kept in the secretary's office, to render statements thereof to the secretary; and all such persons shall render such statements at such time and in such form as the secretary shall require.

**(10)** DEPARTMENT OF PUBLIC INSTRUCTION. The provisions of sub. (2) with respect to refunds and sub. (5) (a) with respect to reimbursements for the prior fiscal year shall not apply to the appropriation under s. 20.255 (2) (ac).

**(11)** SECRETARY TO ALLOCATE DEPARTMENTAL CENTRAL SERVICES COSTS. The secretary may allocate and charge, and may prescribe the procedures for departments to allocate and charge, the central services costs of the department of administration or of individual departments to selected federal grants or contracts. The charges to departments for the central services costs incurred by the department of administration and the indirect costs incurred by the departments in the administration of federally−aided programs under grants or contracts shall be made in accordance with the procedures adopted by the secretary.

**(12)** DATE FOR INTERFUND TRANSFERS. Whenever it is provided by law for a transfer of moneys to be made from one fund to another fund and no date is specified for the transfer to be made, the department shall determine a date on which the transfer shall be made or provide for partial transfers to be made on different dates, and transfer the moneys in accordance with its determination.

**History:** 1971 c. 125, 261; 1973 c. 243; 1975 c. 41 s. 52; 1977 c. 29; 1977 c. 196 s. 130 (3), (4); 1977 c. 272, 273, 418; 1979 c. 34 ss. 65 to 67, 2102 (43) (a); 1981 c. 14; 1983 a. 27 ss. 73, 74, 2202 (42); 1983 a. 368; 1985 a. 29; 1987 a. 399; 1989 a. 31, 336, 359; 1991 a. 39, 316; 1995 a. 27 ss. 296, 297, 9145 (1); 1997 a. 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 74, 335; 2007 a. 20, 97; 2009 a. 28, 276; 2011 a. 7, 10; 2013 a. 20.

**16.525 State aid recipients' accounting.** Every association, society, institute or other organization that receives aid in any form through appropriations from the state shall report to the department in August of each year. Such annual report shall contain a detailed statement of all receipts and expenditures of such

association, society, institute or organization for the fiscal year concluded on the preceding June 30, and such portions as are of special importance may be published in the biennial report of the department under s. 15.04 (1) (d).

**History:** 1977 c. 196 s. 131; 1987 a. 186.

**16.527 Appropriation obligations. (1)** LEGISLATIVE FINDINGS AND DETERMINATIONS. (a) Recognizing that the state, by prepaying part or all of the state's unfunded prior service liability under s. 40.05 (2) (b) and the state's unfunded liability under s. 40.05 (4) (b), (bc), and (bw) and subch. IX of ch. 40, may reduce its costs and better ensure the timely and full payment of retirement benefits to participants and their beneficiaries under the Wisconsin Retirement System, the legislature finds and determines that it is in the public interest for the state to issue appropriation obligations to obtain proceeds to pay the state's anticipated unfunded prior service liability under s. 40.05 (2) (b) and to pay part or all of the state's unfunded prior service liability under s. 40.05 (2) (b) and the state's unfunded liability under s. 40.05 (4) (b), (bc), and (bw) and subch. IX of ch. 40.

(b) The legislature finds and determines that the purchase of any of the tobacco settlement revenues that had been sold by the secretary under s. 16.63 from the net proceeds of appropriation obligations issued under this section is appropriate and in the public interest and will serve a public purpose.

**(2)** DEFINITIONS. In this section:

(ad) "Aggregate expected debt service and net exchange payments" means the sum of the following:

1. The aggregate net payments expected to be made and received under a specified interest exchange agreement under sub. (4) (e).

2. The aggregate debt service expected to be made on obligations related to that agreement.

3. The aggregate net payments expected to be made and received under all other interest exchange agreements under sub. (4) (e) relating to those obligations that are in force at the time of executing the agreement.

(am) "Appropriation obligation" means an undertaking by the state to repay a certain amount of borrowed money that is payable from all of the following:

1. Moneys annually appropriated by law for debt service due with respect to such undertaking in that year.

2. Proceeds of the sale of appropriation obligations described in sub. (3) (b) 3.

3. Payments received for that purpose under agreements and ancillary arrangements described in sub. (4) (e).

4. Investment earnings on amounts in subds. 1. to 3.

(b) "Evidence of appropriation obligation" means a written promise to pay an appropriation obligation.

(c) "Refunding obligation" means an appropriation obligation contracted to fund or refund all or any part of one or more outstanding appropriation obligations.

(d) "Tobacco settlement agreement" has the meaning given in s. 16.63 (1) (b).

(e) "Tobacco settlement revenues" has the meaning given in s. 16.63 (1) (c).

**(3)** AUTHORIZATION OF APPROPRIATION OBLIGATIONS. (a) The department shall have all powers necessary and convenient to carry out its duties, and exercise its authority, under this section.

(b) 1. Subject to the limitation under subd. 2., the department may contract appropriation obligations of the state under this section for the purpose of paying part or all of the state's unfunded prior service liability under s. 40.05 (2) (b) and the state's unfunded liability under s. 40.05 (4) (b), (bc), and (bw) and subch. IX of ch. 40.

2. The sum of appropriation obligations issued under this section for the purpose under subd. 1., excluding any obligations that have been defeased under a cash optimization program administered by the building commission and any obligations issued pursuant to subd. 3. may not exceed $1,500,000,000.

3. The department may contract appropriation obligations as the department determines is desirable to fund or refund outstanding appropriation obligations issued under this section, to pay issuance or administrative expenses, to make deposits to reserve funds, to pay accrued or funded interest, to pay the costs of credit enhancement, or to make payments under other agreements entered into under sub. (4) (e).

(c) 1. Before July 1, 2009, subject to the limitation under subd. 2., the department may contract appropriation obligations of the state under this section for the purpose of purchasing any of the tobacco settlement revenues that had been sold by the secretary under s. 16.63.

2. The sum of appropriation obligations issued under this section for the purpose under subd. 1. may not exceed $1,700,000,000, excluding amounts representing original issue discount, unless a higher amount is required by Badger Tobacco Asset Securitization Corporation to defease any outstanding indebtedness secured by such tobacco settlement revenues and to release repurchased tobacco settlement revenues to the state free and clear of any security interest therein. The secretary's certification as to the amount so required shall be conclusive for all purposes of this section.

**(4)** TERMS. (a) Money may be borrowed and evidences of appropriation obligation issued therefor pursuant to one or more written authorizing certifications under sub. (5), unless otherwise provided in the certification, at any time, in any specific amounts, at any rates of interest, for any term, payable at any intervals, at any place, in any manner, and having any other terms or conditions that the department considers necessary or useful. Appropriation obligations may bear interest at variable or fixed rates, bear no interest, or bear interest payable only at maturity or upon redemption prior to maturity.

(b) The department may authorize evidences of appropriation obligation having any provisions for prepayment considered necessary or useful, including the payment of any premium.

(c) Interest shall cease to accrue on an appropriation obligation on the date that the obligation becomes due for payment if payment is made or duly provided for, but the obligation and accrued interest shall continue to be a binding obligation according to its terms until 6 years overdue for payment, or such longer period as may be required by federal law. At that time, unless demand for its payment has been made, it shall be extinguished and considered no longer outstanding.

(d) All money borrowed by the state pursuant to evidences of appropriation obligation issued under this section shall be lawful money of the United States, and all appropriation obligations shall be payable in such money.

(e) Subject to pars. (h) and (i), at the time of, or in anticipation of, contracting for the appropriation obligations and at any time thereafter so long as the appropriation obligations are outstanding, the department may enter into agreements and ancillary arrangements relating to the appropriation obligations, including trust indentures, liquidity facilities, remarketing or dealer agreements, letter of credit agreements, insurance policies, guaranty agreements, reimbursement agreements, indexing agreements, or interest exchange agreements. Any payments made or received pursuant to any such agreement or ancillary arrangement shall be made from or deposited as provided in the agreement or ancillary arrangement. The determination of the department included in an interest exchange agreement that such agreement relates to an appropriation obligation shall be conclusive.

(f) All evidences of appropriation obligation owned or held by any state fund are outstanding in all respects and the state agency controlling the fund shall have the same rights with respect to an evidence of appropriation obligation as a private party, but if any sinking fund acquires evidences of appropriation obligation that gave rise to such fund, the obligations are considered paid for all

purposes and no longer outstanding and shall be canceled as provided in sub. (8) (e). All evidences of appropriation obligation owned by any state fund shall be registered to the fullest extent registrable.

(g) The state shall not be generally liable on evidences of appropriation obligation and evidences of appropriation obligation shall not be a debt of the state for any purpose whatsoever. Evidences of appropriation obligation, including the principal thereof and interest thereon, shall be payable only from amounts that the legislature may, from year to year, appropriate for the payment thereof.

(h) 1. Subject to subd. 2., the terms and conditions of an interest exchange agreement under par. (e) shall not be structured so that, as of the trade date of the agreement, both of the following are reasonably expected to occur:

a. The aggregate expected debt service and net exchange payments relating to the agreement during the fiscal year in which the trade date occurs will be less than the aggregate expected debt service and net exchange payments relating to the agreement that would be payable during that fiscal year if the agreement is not executed.

b. The aggregate expected debt service and net exchange payments relating to the agreement in subsequent fiscal years will be greater than the aggregate expected debt service and net exchange payments relating to the agreement that would be payable in those fiscal years if the agreement is not executed.

2. Subd. 1. shall not apply if either of the following occurs:

a. The department receives a determination by the independent financial consulting firm that the terms and conditions of the agreement reflect payments by the state that represent on−market rates as of the trade date for the particular type of agreement.

b. The department provides written notice to the joint committee on finance of its intention to enter into an agreement that is reasonably expected to satisfy subd. 1., and the joint committee on finance either approves or disapproves, in writing, the department's entering into the agreement within 14 days of receiving the written notice from the commission.

3. This paragraph shall not limit the liability of the state under an agreement if actual contracted net exchange payments in any fiscal year exceed original expectations.

(i) With respect to any interest exchange agreement or agreements specified in par. (e), all of the following shall apply:

1. The department shall contract with an independent financial consulting firm to determine if the terms and conditions of the agreement reflect a fair market value, as of the proposed date of the execution of the agreement.

2. The interest exchange agreement must identify by maturity, bond issue, or bond purpose the obligation to which the agreement is related. The determination of the department included in an interest exchange agreement that such agreement relates to an obligation shall be conclusive.

3. The resolution authorizing the department to enter into any interest exchange agreement shall require that the terms and conditions of the agreement reflect a fair market value as of the date of execution of the agreement, as reflected by the determination of the independent financial consulting firm under subd. 1., and shall establish guidelines for any such agreement, including the following:

a. The conditions under which the department may enter into the agreements.

b. The form and content of the agreements.

c. The aspects of risk exposure associated with the agreements.

d. The standards and procedures for counterparty selection.

e. The standards for the procurement of, and the setting aside of reserves, if any, in connection with, the agreements.

f. The provisions, if any, for collateralization or other requirements for securing any counterparty's obligations under the agreements.

g. A system for financial monitoring and periodic assessment of the agreements.

(j) Semiannually, during any year in which the state is a party to an agreement entered into pursuant to par. (e), the department shall submit a report to the cochairpersons of the joint committee on finance listing all such agreements. The report shall include all of the following:

1. A description of each agreement, including a summary of its terms and conditions, rates, maturity, and the estimated market value of each agreement.

2. An accounting of amounts that were required to be paid and received on each agreement.

3. Any credit enhancement, liquidity facility, or reserves, including an accounting of the costs and expenses incurred by the state.

4. A description of the counterparty to each agreement.

5. A description of the counterparty risk, the termination risk, and other risks associated with each agreement.

**(5)** PROCEDURES. (a) No evidence of appropriation obligation may be issued by the state unless the issuance is pursuant to a written authorizing certification. The certification shall set forth the aggregate principal amount of appropriation obligations authorized thereby, the manner of sale of the evidences of appropriation obligation, and the form and terms thereof. The certification shall be signed by the secretary, or his or her designee, and shall be transmitted to the governor.

(b) Appropriation obligations may be sold at either public or private sale and may be sold at any price or percentage of par value. The department may provide in any authorizing certification for refunding obligations under sub. (7) that they be exchanged privately in payment and discharge of any of the outstanding obligations being refinanced. All appropriation obligations sold at public sale shall be noticed as provided in the authorizing certification. Any bid received at public sale may be rejected.

**(6)** FORM. (a) Evidences of appropriation obligation may be in the form of bonds, notes, or other evidences of obligation, and may be issued in book−entry form or in certificated form. Notwithstanding s. 403.104 (1), every evidence of appropriation obligation is a negotiable instrument.

(b) Every evidence of appropriation obligation shall be executed in the name of and for the state by the governor and shall be sealed with the great seal of the state or a facsimile thereof. The facsimile signature of the governor may be imprinted in lieu of the manual signature of such officer, as the department directs, if approved by such officer. An evidence of appropriation obligation bearing the manual or facsimile signature of a person in office at the time such signature was signed or imprinted shall be fully valid notwithstanding that before or after the delivery thereof such person ceased to hold such office.

(c) Every evidence of appropriation obligation shall be dated not later than the date issued, shall contain a reference by date to the appropriate authorizing certification, shall state the limitation established in sub. (4) (g), and shall be in accordance with the authorizing certification.

(d) An evidence of appropriation obligation shall be in such form and contain such statements or terms as determined by the department, and may not conflict with law or with the appropriate authorizing certification.

**(7)** REFUNDING OBLIGATIONS. (a) 1. The department may authorize the issuance of appropriation obligation refunding obligations. Refunding obligations may be issued, subject to any contract rights vested in owners of obligations being refinanced, to refinance all or any part of one or more issue of obligations not-

withstanding that the obligations may have been issued at different times. The principal amount of the refunding obligations may not exceed the sum of: the principal amount of the obligations being refinanced; applicable redemption premiums; unpaid interest on the obligations to the date of delivery or exchange of the refunding obligations; in the event the proceeds are to be deposited in trust as provided in par. (c), interest to accrue on the obligations from the date of delivery to the date of maturity or to the redemption date selected by the department, whichever is earlier; and the expenses incurred in the issuance of the refunding obligations and the payment of the obligations.

2. A determination by the department that a refinancing is advantageous or that any of the amounts provided under subd. 1. should be included in the refinancing shall be conclusive.

(b) If the department determines to exchange refunding obligations, they may be exchanged privately for and in payment and discharge of any of the outstanding obligations being refinanced. Refunding obligations may be exchanged for such principal amount of the obligations being exchanged therefor as may be determined by the department to be necessary or advisable. The owners of the obligations being refunded who elect to exchange need not pay accrued interest on the refunding obligations if and to the extent that interest is accrued and unpaid on the obligations being refunded and to be surrendered. If any of the obligations to be refinanced are to be called for redemption, the department shall determine which redemption dates are to be used, if more than one date is applicable and shall, prior to the issuance of the refunding obligations, provide for notice of redemption to be given in the manner and at the times required by the certification authorizing the outstanding obligations.

(c) 1. The principal proceeds from the sale of any refunding obligations shall be applied either to the immediate payment and retirement of the obligations being refinanced or, if the obligations have not matured and are not presently redeemable, to the creation of a trust for and shall be pledged to the payment of the obligations being refinanced.

2. If a trust is created, a separate deposit shall be made for each issue of appropriation obligations being refinanced. Each deposit shall be with the secretary of administration or a bank or trust company that is a member of the Federal Deposit Insurance Corporation. If the total amount of any deposit, including money other than sale proceeds but legally available for such purpose, is less than the principal amount of the obligations being refinanced and for the payment of which the deposit has been created and pledged, together with applicable redemption premiums and interest accrued and to accrue to maturity or to the date of redemption, then the application of the sale proceeds shall be legally sufficient only if the money deposited is invested in securities issued by the United States or one of its agencies, or securities fully guaranteed by the United States, and only if the principal amount of the securities at maturity and the income therefrom to maturity will be sufficient and available, without the need for any further investment or reinvestment, to pay at maturity or upon redemption the principal amount of the obligations being refinanced together with applicable redemption premiums and interest accrued and to accrue to maturity or to the date of redemption. The income from the principal proceeds of the securities shall be applied solely to the payment of the principal of and interest and redemption premiums on the obligations being refinanced, but provision may be made for the pledging and disposition of any surplus.

3. Nothing in this paragraph may be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refinanced that have not matured and that are not presently redeemable. Nothing in this paragraph may be construed to prohibit reinvestment of the income of a trust if the reinvestments will mature at such times that sufficient cash will be available to pay interest, applicable premiums, and principal on the obligations being refinanced.

**(8)** FISCAL REGULATIONS. (a) The department shall act as registrar for each evidence of appropriation obligation. No transfer of a registered evidence of appropriation obligation is valid unless made on a register maintained by the department, and the state may treat the registered owner as the owner of the instrument for all purposes. Payments of principal and interest shall be by electronic funds transfer, check, share draft, or other draft to the registered owner at the owner's address as it appears on the register, unless the department has otherwise provided. Information in the register is not available for inspection and copying under s. 19.35 (1). The department may make any other provision respecting registration as it considers necessary or useful. The department may enter into a contract for the performance of any of its functions relating to appropriation obligations.

(b) The department, or the department's agent, shall maintain records containing a full and correct description of each evidence of appropriation obligation issued, identifying it, and showing its date, issue, amount, interest rate, payment dates, payments made, registration, destruction, and every other relevant transaction.

(c) The secretary may appoint one or more trustees and fiscal agents for each issue of appropriation obligations. The secretary may be denominated the trustee and the sole fiscal agent or a cofiscal agent for any issue of appropriation obligations. Every other fiscal agent shall be an incorporated bank or trust company authorized by the laws of the United States or of the state in which it is located to do a banking or trust company business. There may be deposited with a trustee, in a special account, moneys to be used only for the purposes expressly provided in the certification authorizing the issuance of evidences of appropriation obligation or an agreement between the department and the trustee. The department may make other provisions respecting trustees and fiscal agents as the department considers necessary or useful and may enter into a contract with any trustee or fiscal agent containing such terms, including compensation, and conditions in regard to the trustee or fiscal agent as the department considers necessary or useful.

(d) If any evidence of appropriation obligation is destroyed, lost, or stolen, the department shall execute and deliver a new evidence of appropriation obligation, upon filing with the department evidence satisfactory to the department that the evidence of appropriation obligation has been destroyed, lost, or stolen, upon providing proof of ownership thereof, and upon furnishing the department with indemnity satisfactory to it and complying with such other rules of the department and paying any expenses that the department may incur. The department shall cancel the evidences of appropriation obligation surrendered to the department.

(e) Unless otherwise directed by the department, every evidence of appropriation obligation paid or otherwise retired shall be marked "canceled" and delivered, through the secretary if delivered to a fiscal agent other than the secretary, to the auditor who shall destroy them and deliver to the department a certificate to that effect.

(f) The department may enter into a contract with any firm or individual engaged in financial services for the performance of any of its duties under this section, using selection and procurement procedures established by the department. The contract is not subject to s. 16.705 or 16.75.

**(9)** APPROPRIATION OBLIGATIONS AS LEGAL INVESTMENTS. Any of the following may legally invest any sinking funds, moneys, or other funds belonging to them or under their control in any appropriation obligations issued under this section:

(a) The state, the investment board, public officers, municipal corporations, political subdivisions, and public bodies.

(b) Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business.

(c) Personal representatives, guardians, trustees, and other fiduciaries.

**(10)** MORAL OBLIGATION PLEDGE. Recognizing its moral obligation to do so, the legislature expresses its expectation and aspi-

ration that it shall make timely appropriations from moneys in the general fund that are sufficient to pay the principal and interest due with respect to any appropriation obligations in any year, to make payments of the state under agreements and ancillary arrangements entered into under sub. (4) (e), to make deposits into reserve funds created under sub. (3) (b) 3., and to pay related issuance or administrative expenses.

**History:** 2003 a. 33, 84, 326; 2007 a. 20, 226; 2009 a. 180.

**16.528 Interest on late payments. (1)** DEFINITIONS. In this section:

(a) "Agency" means an office, department, independent agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, that is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority created in subch. II of ch. 114 or in ch. 231, 233, 234, 237, 238, or 279.

(b) "Subcontractor" has the meaning given in s. 66.0901 (1) (d).

**(2)** INTEREST PAYABLE. (a) Except as provided in sub. (3) or as otherwise specifically provided, an agency which does not pay timely the amount due on an order or contract shall pay interest on the balance due from the 31st day after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later, or, if the agency does not comply with s. 16.53 (2), from the 31st day after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later, at the rate specified in s. 71.82 (1) (a) compounded monthly.

(b) For the purposes of par. (a), a payment is timely if the payment is mailed, delivered or transferred by the later of the following:

1. The date specified on a properly completed invoice for the amount specified in the order or contract.

2. Except as provided in subd. 3., within 45 days after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or contract, or, if the agency does not comply with s. 16.53 (2), within 45 days after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later.

3. For orders or contracts entered into on and after the first day of the 3rd 12−month period beginning after February 1, 1987, within 30 days after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or contract, or, if the agency does not comply with s. 16.53 (2), within 30 days after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later.

**(2m)** INTEREST PAYABLE TO SUBCONTRACTORS. (a) Except as provided in sub. (3) (e) or as otherwise specifically provided, principal contractors that engage subcontractors to perform part of the work on an order or contract from an agency shall pay subcontractors for satisfactory work in a timely fashion. A payment is timely if it is mailed, delivered or transferred to the subcontractor no later than 7 days after the principal contractor's receipt of any payment from the agency.

(b) If a subcontractor is not paid in a timely fashion, the principal contractor shall pay interest on the balance due from the 8th day after the principal contractor's receipt of any payment from the agency, at the rate specified in s. 71.82 (1) (a) compounded monthly.

(c) Subcontractors receiving payment under this subsection shall pay lower−tier subcontractors, and be liable for interest on late payments, in the same manner as principal contractors are required to pay subcontractors in pars. (a) and (b).

**(3)** EXCEPTIONS. Subsection (2) does not apply to the following:

(a) Any portion of an order or contract under which the payment is made from federal moneys.

(b) An order or contract that is subject to late payment interest or another late payment charge required by another law or rule specifically authorized by law.

(c) An order or contract between 2 or more agencies except if the order or contract involves prison industries.

(d) An order or contract for services which provides for the time of payment and the consequences of nontimely payment.

(e) An order or contract under which the amount due is subject to a good faith dispute if, before the date payment is not timely, notice of the dispute is sent by 1st class mail, personally delivered or sent in accordance with the procedure specified in the order or contract. In this paragraph, "good faith dispute" means a contention by an agency that goods delivered or services rendered were of a lesser quantity or quality than ordered or specified by contract, were faulty or were installed improperly; or any other reason giving cause for the withholding of payment by the agency until the dispute is settled.

(f) A contract under s. 977.08 (3) (f).

**(4)** APPROPRIATION FROM WHICH PAID. An agency which pays interest under this section shall pay the interest from the appropriation for administration of the program under which the order or contract was made or entered into unless payment from that appropriation is prohibited. Notwithstanding ss. 20.115 to 20.765, if payment from the appropriation for administration of the program is prohibited, the interest payment shall be made from a general program operations appropriation of the agency determined by the agency. If the program is administered from more than one appropriation, the interest payment shall be made from the appropriation or appropriations for program administration determined by the agency.

**(5)** REPORTS OF INTEREST PAID. Annually before October 1, each agency shall report to the department the number of times in the previous fiscal year the agency paid interest under this section, the total amount of interest paid and the reasons why interest payments were not avoided by making timely payment.

**(6)** ATTORNEY FEES. Notwithstanding s. 814.04 (1), in an action to recover interest due under this section, the court shall award the prevailing party reasonable attorney fees.

**History:** 1985 a. 300; 1987 s. 312 s. 17; 1987 a. 399; 1989 a. 233; 1991 a. 39; 1995 a. 27, 241; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 108; 2005 a. 74, 335; 2007 a. 20, 97; 2009 a. 28; 2011 a. 7, 10; 2013 a. 20; 2015 a. 55.

**16.529 Lapses and fund transfers relating to unfunded retirement liability debt service. (1)** The definitions in s. 20.001 are applicable in this section.

**(2)** Notwithstanding ss. 20.001 (3) (a) to (c) and 25.40 (3), beginning in the 2007−09 fiscal biennium, during each fiscal biennium the secretary shall lapse to the general fund or transfer to the general fund from each state agency appropriation specified in sub. (3) an amount equal to that portion of the total amount of principal and interest to be paid on obligations issued under s. 16.527 during the fiscal biennium that is allocable to the appropriation, as determined under sub. (3).

**(3)** The secretary shall determine the amounts of the allocations required under sub. (2) as follows:

(a) The secretary shall first determine the total amount of Wisconsin Retirement System contributions that are to be paid by the state under s. 40.05 during the fiscal biennium.

(b) The secretary shall then determine the percentage of the total amount determined under par. (a) that is allocable to each state agency appropriation from which Wisconsin Retirement System contributions under s. 40.05 are paid. The secretary shall exclude from this determination any appropriation from which a lapse or transfer to pay any principal or interest amount on obligations issued under s. 16.527 would violate a condition imposed by the federal government on the expenditure of the moneys or if the lapse or transfer would violate the federal or state constitution.

(c) For each appropriation identified under par. (b), the secretary shall then apply the percentage calculated under par. (b) to the total amount of principal and interest to be paid during the fiscal biennium on obligations issued under s. 16.527. This amount is the portion of the total amount of principal and interest paid on the obligations during that fiscal biennium that is allocable to each appropriation.

**History:** 2003 a. 33; 2005 a. 25; 2007 a. 5.

**16.53 Preaudit procedure.** The department of administration shall preaudit claims in accordance with the following procedures:

**(1)** CLAIMS AGAINST STATE. (a) *Audit.* The secretary is responsible for auditing claims against the state, when payment thereof out of the state treasury is authorized by law, except as provided in ss. 16.77 (1) and 20.920. The audit may be on a sample basis in accordance with generally accepted auditing standards. The secretary may delegate in writing the audit function to the head of any agency under terms and standards established by the secretary. The delegation shall be by mutual agreement and notice of the agreement shall be reported to the state auditor. If the secretary finds, through sample auditing, review of procedures, controls and any other audit techniques the secretary deems necessary, that the delegated function is not being performed according to the established auditing standards, the secretary shall in writing withdraw the delegated authority. In this subsection, "agency" has the meaning given under s. 16.52 (7).

(b) *Payrolls.* Payrolls, to be entitled to audit, shall be certified by the proper officers who shall set forth the nature of the services rendered by each person named therein.

(c) *Other claims.* Unless otherwise provided by law, all other claims to be entitled to audit shall:

1. Specify the nature and particulars thereof on an official or original invoice.

2. Conform with statutory provisions and be necessarily incurred in the performance of duties required by the state service.

4. Include the claimant's affidavit, or statement under the penalties of perjury, setting forth that all items of traveling expenses were incurred in the performance of duties required by the public service, and that the amount charged for transportation or for other expenses incident to travel was actually paid out and that no part of such transportation was had upon a free pass or otherwise free of charge. The blank form of such travel voucher shall be prescribed by the secretary.

6. Exclude items of expenditure incurred while traveling outside the state by any officer or employee of any state department or institution thereof unless in the discharge of duties required by the public service.

7. Exclude out−of−state expenses of an officer or employee of any state department or institution except upon the order of the head of that department or institution. The department or institution head may determine whether such requests shall be made individually or periodically. The governor may require periodic reports on out−of−state travel made by the personnel of each state agency with such detail as the governor may desire. The governor, by executive order, may require the governor's prior approval for out−of−state travel by members of any state department or institution of the executive branch.

9. Be approved by the proper state officer.

10. Exclude items of expenditure incurred by an employee of any state department while permanently located outside the state unless prior approval of the department of administration has been obtained.

(ca) *Supervision of expenditures.* All departments shall diligently review and supervise the travel expenditures of their employees and may promulgate reasonable rules governing such expenditures. Such rules shall be consistent with the uniform guidelines established under s. 20.916 (8). Each claim shall be approved by the employee's appointing authority, as defined in s. 230.03 (4), or the appointing authority's authorized representative. The approval shall represent the concurrence with the accuracy, necessity and reasonableness of each expense. Claims so approved shall be audited by the department of administration in accordance with par. (a).

(cm) *Advancement of travel expenses.* The head of a state agency may advance money for travel expenses to employees. Any travel advance shall not exceed 80 percent of the estimated expense.

(d) *Salaries and benefits; when payable.* 1. The secretary, with the approval of the joint committee on employment relations, shall fix the time and frequency for payment of salaries due elective and appointive officers and employees of the state. As determined under this subdivision, the salaries shall be paid either monthly, semimonthly or for each 2−week period.

2. Costs for benefits under ch. 108 which are paid on an actual basis may be charged to and collected from agencies by the secretary on an estimated or premium basis, credited to appropriate appropriations, and paid from the appropriations on an actual basis. If a billing submitted by the department of workforce development for payment of a specific claim for benefits under s. 108.15 (7) remains unpaid by the agency to whom the billing is submitted for more than 60 days after the billing is transmitted to the agency by the secretary, the secretary may charge the cost of payment of the billing to the proper appropriation of the agency to whom the billing is submitted without authorization of the agency and notwithstanding any pending dispute concerning agency liability. If it is finally determined that an agency is not liable in whole or in part for payment of a billing previously submitted and paid, the secretary shall credit any refund received to the appropriation from which the billing was paid, if it is available for expenditure, or otherwise to the fund from which the billing was paid. Any credit to a sum sufficient appropriation shall be made only to the fund from which the appropriation is made. In addition, the secretary may charge agencies for the department's costs of estimation, collection and payment of benefits under ch. 108 on a prorated basis in accordance with the percentage of costs attributable to each agency. Service charges shall be paid into the appropriation made under s. 20.505 (1) (ka).

3. In order to utilize modern accounting methods in processing payrolls, the department may convert and adjust salaries of all state officers and employees so that they are payable in equal payments throughout the year. To this end the secretary may promulgate rules necessary to administer this subdivision.

4. The secretary may promulgate rules pertaining to the administration of earnings garnishment actions under s. 812.42 whenever the state is the garnishee in such actions. In any earnings garnishment action where the judgment debtor is employed by the University of Wisconsin System, the secretary may require the appropriate payroll processing center for the University of Wisconsin System to directly process necessary forms, papers, deductions and checks, share drafts or other drafts in connection with such action.

**(2)** IMPROPER INVOICES. If an agency receives an improperly completed invoice, the agency shall notify the sender of the invoice within 10 working days after it receives the invoice of the reason it is improperly completed. In this subsection, "agency" means an office, department, independent agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, that is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority created in subch. II of ch. 114 or in ch. 231, 233, 234, 237, 238, or 279.

**(3)** EXAMINATION OF CLAIMANTS. The secretary may examine under oath the claimant or any other person relative to any claim presented against the state, and may require oral or written answers as to any facts relating to the justness of the claim, or as to the liability of the state.

**(4)** AUDIT ORDER ENDORSED ON CLAIM; RECORD. The order of the secretary auditing any claim shall be endorsed on or annexed to such claim, shall specify the amount allowed, the fund from which the same is payable, and the law that authorizes payment of such claim out of the treasury; and said order with the claim and all evidence relative thereto shall be filed and preserved in the secretary's office. The secretary may develop procedures to permit electronic compliance with any requirement under this subsection.

**(5)** WARRANTS; WHAT TO SPECIFY. The secretary shall draw a warrant on the state treasury payable to the claimant for the amount allowed by the secretary upon every claim audited under sub. (1), except as authorized in s. 16.52 (7), 20.920, or 20.929, specifying from what fund to be paid, the particular law that authorizes the claim to be paid out of the state treasury, and at the secretary's discretion the post−office address of the payee. No moneys may be paid out of the state treasury under this section otherwise than upon such warrants.

**(6)** WARRANTS; SIGNATURES. Whenever it is impracticable for the secretary to personally sign warrants issued on the state treasury, the secretary's name may be signed thereto by one or more persons in the secretary's department designated by the secretary or by the use of a mechanical device adopted by the secretary for affixing a facsimile signature; and the state treasurer, when written authority and reasons therefor are filed in the office of the state treasurer, shall honor warrants so signed, the same as if signed in person by the secretary, until such authority is revoked in writing.

**(7)** CERTIFICATION OF BOARDS, EVIDENCE OF CORRECTNESS OF ACCOUNT. The certificate of the proper officers of the board of regents of the University of Wisconsin System, the department of health services, or the proper officers of any other board or commission organized or established by the state, shall in all cases be evidence of the correctness of any account which may be certified by them.

**(9)** TRANSFER OF FUNDS APPROPRIATED. Whenever an appropriation has been made from the general fund in the state treasury to any other fund therein, the secretary may withhold the transfer of such appropriation or any part thereof from the general fund until the moneys required to pay outstanding claims are duly audited and disbursed. Such authority is not limited to the fiscal year of the appropriation if the liability is properly recognized and recorded.

**(10)** PRIORITY OF CLAIMS. (a) If an emergency arises which requires the department to draw vouchers for payments which will be in excess of available moneys in any state fund, the secretary, after notifying the joint committee on finance under par. (b), may prorate and establish priority schedules for all payments within each fund, including those payments for which a specific payment date is provided by statute, except as otherwise provided in this paragraph. The secretary shall draw all vouchers according to the preference provided in this paragraph. All direct or indirect payments of principal or interest on state bonds and notes issued under subch. I of ch. 18 and payments due, if any, under an agreement or ancillary arrangement entered into under s. 18.06 (8) (a) relating to any public debt contracted under subchs. I and IV of ch. 18 have first priority. All direct or indirect payments of principal or interest on state notes issued under subch. III of ch. 18 have 2nd priority. No payment having a 1st or 2nd priority may be prorated or reduced under this subsection. All state employee payrolls have 3rd priority. The secretary shall draw all remaining vouchers according to a priority determined by the secretary. The secretary shall maintain records of all claims prorated under this subsection.

(b) Before exercising authority under par. (a) the secretary shall notify the joint committee on finance as to the need for and the procedures under which proration or priority schedules under par. (a) shall occur. If the joint committee on finance has not, within 2 working days after the notification, scheduled a meeting to review the secretary's proposal, the secretary may proceed with the proposed action. If, within 2 working days after the notification, the committee schedules a meeting, the secretary may not proceed with the proposed action until after the meeting is held.

(c) If the secretary prorates or establishes priority schedules for payments which are to be made to local units of government, he or she shall establish a procedure whereby any local unit of government which can demonstrate that it would be adversely affected by such action of the secretary may appeal to the secretary for a waiver from having its payment prorated or delayed. In establishing this procedure, the secretary shall consider a local unit of government adversely affected if it can demonstrate that the proration or delay would cause a financial hardship because the scheduled payment had been budgeted as a revenue to be available at the scheduled time of payment and the local unit of government would otherwise have insufficient revenues to meet its immediate expenditure obligations.

(e) The authority granted by this subsection may be exercised only after all other possible procedures have been used and are found to be insufficient, including the temporary reallocation of surplus moneys as provided in s. 20.002 (11).

**(11)** INTEREST ON DELAYED PAYMENTS. Payments, other than payments subject to s. 16.528, prorated or delayed under sub. (10) which are payable to local units of government shall accrue interest on the payment delay at a rate equal to the state investment fund earnings rate during the period of the payment delay. Payments subject to s. 16.528 prorated or delayed under sub. (10) past the due date shall not accrue interest. In this subsection, "local unit of government" means a county, city, village, town, school district, technical college district or any other governmental entity which is entitled to receive aid payments from this state.

**(12)** TRAVEL EXPENSES. (a) In this subsection:

1. "Agency" has the meaning given under sub. (2).

2. "Employee" means any officer or employee of the state who is entitled to reimbursement for actual, reasonable and necessary expenses.

(b) Each voucher claim for travel expenses shall be approved by the head of the employee's agency or that person's designee. Such approval represents concurrence with the necessity and reasonableness of each expense. Such approval shall accompany the travel voucher. The expense voucher shall be audited by the agency financial office and then submitted to the department for final audit before payment.

(c) The department may not approve for payment any travel vouchers which exceed the maximum travel schedule amounts which are established under s. 20.916 (8), except in unusual circumstances when accompanied by a receipt and full explanation of the reasonableness of such expense.

(d) The department may not approve for payment any travel vouchers which exceed the auto mileage rates set under s. 20.916 (4) (a) and (e).

**(13)** FINANCIAL SERVICES. (a) In this subsection, "agency" has the meaning given in s. 16.70 (1e).

(b) The department may charge any agency for accounting, auditing, payroll and other financial services provided to the agency, whether the services are required by law or performed at the agency's request.

**(14)** REVIEW OF PROPOSED INCORPORATIONS AND ANNEXATIONS. The incorporation review board may prescribe and collect a fee for review of any petition for incorporation of a municipality under s. 66.0203. The department may prescribe and collect a fee for review of any petition for annexation of municipal territory under s. 66.0217. The fee shall be paid by the person or persons filing the petition for incorporation or by the person or persons filing the notice of the proposed annexation.

**History:** 1971 c. 100 s. 23; 1971 c. 215, 261; Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1975 c. 39, 164, 198, 397, 422; 1977 c. 29, 196, 418; 1979 c. 34, 221; 1981 c. 1, 20; 1983 a. 3, 27, 192, 368; 1985 a. 29, 300; 1985 a. 332 ss. 15, 251 (1); 1987 a. 399; 1989 a. 31; 1989 a. 125 ss. 1, 10; 1991 a. 39, 316; 1993 a. 80, 399; 1995 a. 27 ss. 301, 302, 9126 (19), 9130 (4); 1997 a. 3; 2001 a. 16; 2003 a. 33, 117, 171; 2005

a. 74, 335; 2007 a. 20 ss. 90b, 91, 9121 (6) (a); 2007 a. 97; 2009 a. 28; 2011 a. 7, 10; 2013 a. 20.

**16.531 Cash flow plan; report. (1)** At least 15 days prior to the beginning of any calendar quarter in which the secretary anticipates that it may be necessary to exercise the authority conferred in s. 16.53 (10) (a) or 20.002 (11) (a) or to incur financial obligations and issue operating notes under subch. III of ch. 18, the secretary shall submit a plan to the joint committee on finance describing the specific nature of any proposed action that may be required.

**(2)** If the secretary determines during any calendar quarter that action under s. 16.53 (10) (a) or 20.002 (11) or subch. III of ch. 18 should be taken that is different from the action specified in the plan submitted under sub. (1), the secretary shall provide notice to the joint committee on finance of the specific nature of any such action that may be required. If the joint committee on finance has not, within 2 working days after such notification, scheduled a meeting to review the secretary's proposal, the secretary may proceed with the proposed action. If, within 2 working days after such notification, the committee schedules a meeting, the secretary may not proceed with the proposed action until after the meeting is held.

**(3)** Within 30 days after the end of each calendar quarter during which the secretary exercises the authority conferred in s. 16.53 (10) (a), during which there is any outstanding reallocation of moneys under s. 20.002 (11) (a) or during which there are any outstanding operating notes issued under subch. III of ch. 18, the secretary shall submit to the joint committee on finance a report on the status of all such matters, together with an assessment of the degree to which the secretary anticipates that state funds and accounts will have sufficient revenues to meet anticipated obligations during the 6−month period following the calendar quarter for which the report is issued.

**(4)** This section does not apply to actual or projected imbalances in the unemployment reserve fund or to loans to the fund made under s. 20.002 (11) (b) 3m.

**History:** 1983 a. 3; 2013 a. 20.

**16.54 Acceptance of federal funds. (1)** Whenever the United States government shall make available to this state funds for the education, the promotion of health, the relief of indigency, the promotion of agriculture or for any other purpose other than the administration of the tribal or any individual funds of Wisconsin Indians, the governor on behalf of the state is authorized to accept the funds so made available. In exercising the authority herein conferred, the governor may stipulate as a condition of the acceptance of the act of congress by this state such conditions as in the governor's discretion may be necessary to safeguard the interests of this state.

**(2)** (a) 1. Except as provided in subd. 2., whenever funds shall be made available to this state through an act of congress and the funds are accepted as provided in sub. (1), the governor shall designate the state board, commission or department to administer any of such funds, and the board, commission or department so designated by the governor is authorized and directed to administer such funds for the purpose designated by the act of congress making an appropriation of such funds, or by the department of the United States government making such funds available to this state. Whenever a block grant is made to this state, no moneys received as a part of the block grant may be transferred from use as a part of one such grant to use as a part of another such grant, regardless of whether a transfer between appropriations is required, unless the joint committee on finance approves the transfer.

2. Whenever a block grant is made to this state under any federal law enacted after August 31, 1995, which authorizes the distribution of block grants for the purposes for which the grant is made, the governor shall not administer and no board, commission or department may encumber or expend moneys received as a part of the grant unless the governor first notifies the cochairpersons of the joint committee on finance, in writing, that the grant has been made. The notice shall contain a description of the purposes proposed by the governor for expenditure of the moneys received as a part of the grant. If the cochairpersons of the committee do not notify the governor that the committee has scheduled a meeting for the purpose of reviewing the proposed expenditure of grant moneys within 14 working days after the date of the governor's notification, the moneys may be expended as proposed by the governor. If, within 14 working days after the date of the governor's notification, the cochairpersons of the committee notify the governor that the committee has scheduled a meeting for the purpose of reviewing the proposed expenditure of grant moneys, no moneys received as a part of the grant may be expended without the approval of the committee. This subdivision does not apply to the expenditure of block grant funds that are allocated under s. 49.175.

3. In this subsection, "block grant" means a multipurpose federal grant so designated under federal law.

(b) Upon presentation by the department to the joint committee on finance of alternatives to the provisions under s. 16.27, the joint committee on finance may revise the eligibility criteria under s. 16.27 (5) or benefit payments under s. 16.27 (6), and the department shall implement those revisions. Benefits or eligibility criteria so revised shall take into account and be consistent with the requirements of federal regulations promulgated under 42 USC 8621 to 8629. If funds received under 42 USC 8621 to 8629 in a federal fiscal year total less than 90 percent of the amount received in the previous federal fiscal year, the department shall submit to the joint committee on finance a plan for expenditure of the funds. The department may not use the funds unless the committee approves the plan.

(c) Notwithstanding s. 20.435, before using any of the funds disbursed by the federal government to the governor under 42 USC 1397 to 1397f, commencing with funds disbursed for federal fiscal year 1986, the department of health services shall submit to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution to the appropriate legislative standing committees under s. 13.172 (3), the proposed state report required under 42 USC 1397c. The appropriate legislative standing committees shall review the reports, conduct public hearings on the reports and submit recommendations to the department of health services regarding the reports. The department of health services may not use the federal funds unless the joint committee on finance approves the report.

**(4)** Any board, commission or department of the state government designated to administer any such fund, shall, in the administration of such fund, comply with the requirements of the act of congress making such appropriation and with the rules and regulations which may be prescribed by the United States government or by the department of the federal government making such funds available.

**(5)** Whenever any agency of the federal government shall require that as a condition to obtaining federal aid the state agency entrusted with the administration of such aid shall submit a budget, plan, application, or other project proposal, then the budget, plan, application or proposal shall, before it is submitted to the federal authorities for approval, first be approved by the governor and reported to the joint committee on finance.

**(6)** The governor may accept for the state the provisions of any act of congress whereby funds or other benefits are made available to the state, its political subdivisions, or its citizens, so far as the governor considers the provisions to be in the public interest. To this end, the governor may take or cause to be taken all necessary acts including, without limitation because of enumeration, the following:

(a) The making of leases or other contracts with the federal government.

(b) The preparation, adoption and execution of plans, methods, and agreements.

(c) The designation of state, municipal or other agencies to perform specific duties.

**(7)** The governor may accept for the state at all times the provisions of any act of congress whereby funds are made available to the state for any purpose whatsoever, including the school health program under the social security act, and perform all other acts necessary to comply with and otherwise obtain, facilitate, expedite, and carry out the required provisions of such acts of congress.

**(8)** An agency may request the governor to create or abolish a full−time equivalent position or portion thereof funded from revenues specified in s. 20.001 (2) (e) in the agency. Upon receiving such a request, the governor may change the authorized level of full−time equivalent positions funded from such revenues in the agency. The governor may approve a different authorized level of positions than is requested by the agency. The governor, through the secretary, shall notify the joint committee on finance at least quarterly of any federal funds received in excess of those approved in the biennial budget process and of any positions created or abolished under this section.

**(8g)** Subsections (1) to (8) do not apply to federal moneys made available to the board of regents of the University of Wisconsin System for instruction, extension, special projects or emergency employment opportunities.

**(8r)** (a) Whenever the federal government makes available moneys for instruction, extension, special projects or emergency employment opportunities, the board of regents of the University of Wisconsin System may accept the moneys on behalf of the state. The board of regents shall, in the administration of the expenditure of such moneys, comply with the requirements of the act of congress making the moneys available and with the regulations prescribed by the federal government or the federal agency administering the act, insofar as the act or regulations are consistent with state law. The board of regents may submit any plan, budget, application or proposal required by the federal agency as a precondition to receipt of the moneys. The board of regents may, consistent with state law, perform any act required by the act of congress or the federal agency to carry out the purpose of the act of congress. The board of regents shall deposit all moneys received under this paragraph in the appropriation account under s. 20.285 (1) (m).

(b) Annually by October 1 the board of regents shall report to the governor and the cochairpersons of the joint committee on finance concerning the date, amount and purpose of any federal moneys accepted by the board under par. (a) during the preceding fiscal year.

**(9)** (a) In this subsection:

1. "Agency" means an office, department, independent agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority created in subch. II of ch. 114 or in ch. 231, 233, 234, 237, 238, or 279.

2. "Indirect cost reimbursement" means moneys received by an agency from the federal government as reimbursement for indirect costs of administration of a federal grant or contract for which no specific use is mandated by the federal government.

(b) An indirect cost reimbursement may be utilized for administrative purposes, program purposes, funding of positions, payment of federal aid disallowances, or other purposes authorized by law. If an indirect cost reimbursement is not utilized for such a purpose, the head of the agency receiving the reimbursement shall request the department to transfer the reimbursement to the general fund as general purpose revenue — earned. All transfers and other expenditures are subject to approval of the secretary under s. 16.50 (2) and the governor under this section.

(c) All moneys received as indirect cost reimbursements shall be deposited in the account for the proper appropriation under ss. 20.115 to 20.855 for receipt of indirect cost reimbursements.

(d) The department shall coordinate the development of a statewide indirect cost allocation plan to be used by all agencies as part of their indirect cost allocation plans prepared for federal grant applications. Upon request of the department, all agencies shall prepare individual, specific, indirect cost allocation plans in accordance with federal regulations and submit the plans to the department. Upon request of the department, all agencies shall prepare and submit to the department updated indirect cost allocation plans. The secretary may modify any plan to bring it into compliance with applicable state laws or procedures established under s. 16.52 or this section, and to maintain consistency between the plans of agencies.

**(10)** Before acceptance of any federal grant on behalf of the state which will or may involve the provision of auditing services by the legislative audit bureau, all departments shall provide written notification to the state auditor. Each such federal grant shall, to the maximum extent permitted by federal law and regulation, include an allocation for the cost of such auditing services within the grant budget, plan, application or project proposal.

**(11)** The state board, commission or department designated by the governor under sub. (2) to administer federal payments in lieu of taxes on national forest lands shall distribute those payments to towns, cities and villages, but not to counties, that provide general governmental services and contain national forest lands. That distribution shall reflect the level of services provided by, and the number of acres of national forest land within, the town, city or village in accordance with 31 USC 6907.

**(12)** (a) The department of health services may not expend or encumber any moneys received under s. 20.435 (8) (mm) unless the department of health services submits a plan for the expenditure of the moneys to the department of administration and the department of administration approves the plan.

(b) The department of children and families may not expend or encumber any moneys credited to the appropriation account under s. 20.437 (2) (mm) or (3) (mm) unless the department of children and families submits a plan for the expenditure of the moneys to the department of administration and the department of administration approves the plan.

(c) The department of administration may approve any plan submitted under par. (a) or (b) in whole or in part. If the department approves any such plan in whole or part, the department shall notify the cochairpersons of the joint committee on finance, in writing, of the department's action under this paragraph.

(d) At the end of each fiscal year, the department of administration shall determine the amount of moneys that remain in the appropriation accounts under ss. 20.435 (8) (mm) and 20.437 (2) (mm) and (3) (mm) that have not been approved for encumbrance or expenditure by the department pursuant to a plan submitted under par. (a) or (b) and shall require that such moneys be lapsed to the general fund. The department shall notify the cochairpersons of the joint committee on finance, in writing, of the department's action under this paragraph.

**(13)** (a) If the state receives any interest payments from the federal government relating to the timing of transfers of federal grant funds for programs that are funded with moneys from the general fund and that are covered in an agreement between the federal department of the treasury and the state under the federal Cash Management Improvement Act of 1990, as amended, the payments, less applicable administrative costs, shall be deposited in the general fund as general purpose revenue — earned.

(b) If the state is required to pay any interest payments to the federal government relating to the timing of transfers of federal grant funds for programs that are funded with moneys from the

general fund and that are covered in an agreement between the federal department of the treasury and the state under the federal Cash Management Improvement Act of 1990, as amended, the secretary shall notify the cochairpersons of the joint committee on finance, in writing, that the state is required to pay an interest payment. The notice shall contain an accounting of the amount of interest that the state is required to pay.

**History:** 1973 c. 333; 1975 c. 39 ss. 69, 732 (1); 1975 c. 224; 1977 c. 418; 1979 c. 34; 1981 c. 27; 1983 a. 27, 208, 470; 1985 a. 29; 1987 a. 4, 27, 186, 399, 403; 1989 a. 31; 1991 a. 39, 316; 1995 a. 27 ss. 303 to 307, 9126 (19); 1995 a. 132, 225; 1999 a. 9, 74; 2001 a. 16; 2003 a. 33; 2005 a. 25, 74, 335; 2007 a. 20 ss. 92b, 95, 98, 9121 (6) (a); 2007 a. 97; 2009 a. 28, 332; 2011 a. 7, 10, 32; 2013 a. 20.

**Cross−reference:** See also s. NR 55.01, Wis. adm. code.

Wisconsin may enter into an agreement with the federal government for the development, administration, and enforcement, at the state level, of occupational safety and health laws meeting federal standards. 61 Atty. Gen. 353.

Counties do not have the power to form consortiums for purposes of a federal act when the Governor has not designated them as participating units of government under sub. (6). 63 Atty. Gen. 453.

The governor may authorize counties to channel CETA funds through private nonprofit agencies. 66 Atty. Gen. 15.

**16.544 Federal aid disallowances. (1)** Each agency that is informed by a federal agency that any liability of $10,000 or more incurred by the agency that has been or was anticipated to be assumed by the federal government from federal moneys received by the agency will not be an allowable use of the federal moneys shall notify the department and the joint committee on finance in writing of the disallowance. The notice shall include a statement of the method proposed by the agency to settle the disallowance.

**(2)** Each agency having given notice under sub. (1) shall make a quarterly report to the department, or at such other times as the secretary may require, concerning the status of efforts to resolve the audit disallowance. The format of the report shall be determined by the secretary.

**(3)** Prior to taking final action to remove any liability related to a disallowance of the use of federal moneys, an agency shall submit to the department a statement of the action proposed to remove the liability. The department may approve, disapprove or approve with modifications each such proposed action. The secretary shall forward a copy of each statement of proposed action approved by the department to the joint committee on finance. This subsection does not apply to an action taken by the board of regents of the University of Wisconsin System, within the statutory authority of the board, to remove a liability of less than $5,000.

**(4)** In this section, "agency" has the meaning given under s. 16.52 (7).

**History:** 1983 a. 27; 1987 a. 27.

**16.545 Federal aid management service.** A federal aids management service shall be established in the department of administration:

**(1)** To fully inform the governor, the legislature, state agencies and the public of available federal aid programs.

**(2)** To fully inform the governor and the legislature of pending federal aid legislation.

**(3)** To advise the governor and the legislature of alternative and recommended methods of administering federal aid programs.

**(4)** To study and interpret the effect of federal aid programs on the administration of state government and the pattern of state government finances.

**(5)** To assist in the coordination of broad federal aid programs which are administered by more than one state agency.

**(6)** To maintain an information center on federal aid programs.

**(7)** To analyze and advise on proposed federal aid budgets submitted to the governor and the joint committee on finance under s. 16.54 (5).

**(8)** To serve as the state central information reception center for the receipt and dissemination of such federal grant−in−aid information as provided by federal agencies pursuant to section 201 of the federal intergovernmental cooperation act of 1968. The department shall report all such information to the governor and to the joint committee on finance.

**(9)** To initiate contacts with the federal government for the purpose of facilitating participation by agencies, as defined in s. 16.70 (1e), in federal aid programs, to assist those agencies in applying for such aid, and to facilitate influencing the federal government to make policy changes that will be beneficial to this state. The department may assess an agency to which it provides services under this subsection a fee for the expenses incurred by the department in providing those services.

**History:** 1975 c. 39; 1983 a. 192 s. 303 (3); 1983 a. 308, 538; 1995 a. 27; 2001 a. 16; 2003 a. 33.

**16.548 Federal−state relations office; report. (1)** The department may maintain a federal−state relations office in Washington, D.C., for the purpose of promoting federal−state cooperation, headed by a director. The director and a staff assistant for the office shall be appointed by the governor outside the classified service, subject to the concurrence of the joint committee on legislative organization. The director and staff assistant shall serve at the pleasure of the governor.

**(2)** If the department maintains a federal−state relations office, it shall submit a report from the office to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), within 30 days after the close of each calendar quarter detailing the activities of the office during the quarter and reporting the status of federal legislation of concern to the legislature and other state agencies.

**(3)** The department may arrange for the federal−state relations office to share office facilities with a similar office serving another state.

**History:** 1979 c. 34; 1983 a. 27, 192; 1987 a. 186.

**16.55 Frauds and uncollectible shortages.** The head of each agency shall immediately provide to the secretary any information within his or her knowledge or evidence in his or her possession concerning any suspected fraudulent use of appropriations or embezzlement of moneys in the custody of the agency or any officer or employee thereof. The attorney general shall investigate and, on or before March 1 of each odd−numbered year, notify the department of the sums of money embezzled from the several state accounts during the prior 2 years indicating the amounts uncollected and uncollectible. The department shall cause a bill to be prepared appropriating from the several state funds the amounts necessary to liquidate the uncollectible shortages in state accounts caused by such embezzlement, and submit such bill to the joint committee on finance for introduction.

**History:** 1981 c. 20.

**16.56 Grain inspection funding.** On June 30 of each fiscal year, the department shall determine whether the accumulated expenses for the inspection and certification of grain under s. 93.06 (1m) have exceeded the accumulated revenues from conducting that inspection and certification as of that date. If so, immediately before the end of the fiscal year, the department shall transfer the unencumbered balances in the appropriation accounts under s. 20.115 (1) (a), (2) (a), (3) (a), (7) (a), and (8) (a), up to the amount of the excess, to the appropriation account under s. 20.115 (1) (h).

**History:** 2005 a. 25.

**16.58 Services to units of local government. (1)** The department shall provide management and personnel consultative and technical assistance to units of government other than the state and may charge for those services.

**(2)** The department may request technical and staff assistance from other state agencies in providing management and personnel consultative services to those units of government.

**(3)** The department may provide financial consulting services to a local exposition district created under subch. II of ch. 229.

**History:** 1979 c. 361; 2015 a. 60.

**16.60 Services to nonprofit corporations. (1)** The department of administration may provide, on a reimbursable basis, financial and management services for nonprofit corporations with which the state or its agencies has entered into leases and subleases for the construction and leasing of projects. Services provided under this section shall be in accordance with the request of the building commission as to the type and scope of service requested, the civil service range of the employee or employees assigned to them and the total reimbursement to be charged by the department of administration to the nonprofit corporations.

**(2)** The department or the legislature or any person delegated by the legislature may inspect and examine or cause an inspection and examination of all records relating to the construction of projects that are, or are to be, financed by a nonprofit corporation and leased or subleased by any state agency.

**(3)** The secretary or the secretary's designated representative shall serve in an advisory capacity to and be a nonvoting member of any nonprofit corporation with which the state or its agencies has entered into leases and subleases for the construction and leasing of projects.

**History:** 1983 a. 36 s. 96 (4); 1991 a. 316.

**16.61 Records of state offices and other public records. (1)** PUBLIC RECORDS BOARD. The public records board shall preserve for permanent use important state records, prescribe policies and standards that provide an orderly method for the disposition of other state records and rationalize and make more cost−effective the management of records by state agencies.

**(2)** DEFINITIONS. As used in this section:

(a) "Board" means the public records board.

(af) "Form" has the meaning specified in s. 16.97 (5p).

(am) "Microfilm reproduction" means any manner by which an image is reduced in size and reproduced on fine−grain, high resolution film.

(an) "Personally identifiable information" has the meaning specified in s. 19.62 (5).

(b) "Public records" means all books, papers, maps, photographs, films, recordings, optical discs, electronically formatted documents, or other documentary materials, regardless of physical form or characteristics, made or received by any state agency or its officers or employees in connection with the transaction of public business, and documents of any insurer that is liquidated or in the process of liquidation under ch. 645. "Public records" does not include:

1. Records and correspondence of any member of the legislature.

1m. Any state document received by a state document depository library.

2. Duplicate copies of materials the original copies of which are in the custody of the same state agency and which are maintained only for convenience or reference and for no other substantive purpose.

3. Materials in the possession of a library or museum made or acquired solely for reference or exhibition purposes.

4. Notices or invitations received by a state agency that were not solicited by the agency and that are not related to any official action taken, proposed or considered by the agency.

5. Drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working.

6. Routing slips and envelopes.

(bm) "Records and forms officer" means a person designated by a state agency to comply with all records and forms management laws and rules under s. 15.04 (1) (j) and to act as a liaison between that state agency and the board.

(c) "Records series" means public records that are arranged under a manual or automated filing system, or are kept together as a unit, because they relate to a particular subject, result from the same activity, or have a particular form.

(cm) "Retention schedule" means instructions as to the length of time, the location and the form in which records series are to be kept and the method of filing records series.

(d) "State agency" means any officer, commission, board, department or bureau of state government.

**(3)** POWERS AND DUTIES OF THE BOARD. The board:

(a) Shall safeguard the legal, financial and historical interests of the state in public records.

(b) Upon the request of any state agency, county, town, city, village, or school district, may order upon such terms as the board finds necessary to safeguard the legal, financial, and historical interests of the state in public records, the destruction, reproduction by microfilm or other process, optical disc or electronic storage or the temporary or permanent retention or other disposition of public records.

(c) May promulgate rules to carry out the purposes of this section.

(d) Shall establish a system for the protection and preservation of essential public records that are necessary to the continuity of governmental functions in the event of a disaster, as defined in s. 323.02 (6), or the imminent threat of a disaster, and in establishing the system shall do all of the following:

1. Determine what records are essential for operation during a state of emergency and thereafter through consultation with all state departments and independent agencies and the administrator, establish the manner in which such records shall be preserved, and provide for their preservation.

2. Require every state department and independent agency to establish and maintain a preservation program for essential state public records.

3. Provide for security storage of essential state records.

4. Furnish state departments and independent agencies with copies of the final plan for preservation of essential public records.

5. Advise all political subdivisions of this state on preservation of essential public records.

(e) May establish the minimum period of time for retention before destruction of any county, city, town, village, metropolitan sewerage district or school district record.

(f) Shall cooperate with and advise records and forms officers.

(j) Shall establish a records management program for this state.

(L) Shall receive and investigate complaints about forms, except as provided in sub. (3n).

(o) May delegate any of the duties under this subsection to other state agencies.

(r) Shall consider recommendations and advice offered by records and forms officers.

(s) Shall recommend to the department procedures for the transfer of public records and records of the University of Wisconsin Hospitals and Clinics Authority to optical disc format, including procedures to ensure the authenticity, accuracy, and reliability of any public records or records of the University of Wisconsin Hospitals and Clinics Authority so transferred and procedures to ensure that such records are protected from unauthorized destruction. The board shall also recommend to the department qualitative standards for optical discs and copies of documents generated from optical discs used to store public records and records of the University of Wisconsin Hospitals and Clinics Authority.

(t) Shall recommend to the department qualitative standards for optical discs and for copies of documents generated from opti-

cal discs used to store materials filed with local governmental units.

(tm) Shall recommend to the department qualitative standards for storage of records in electronic format and for copies of documents generated from electronically stored records filed with local governmental units.

(u) 1. Shall create a registry, in a format that may be accessed by computer terminal, describing the records series maintained by state agencies that contain personally identifiable information by using, to the maximum extent feasible, information submitted to the board in retention schedules under sub. (4) (b). The board may require state agencies to provide additional information necessary to create the registry. The board may not require a state agency to modify any records series described in the registry.

2. The registry shall not include any of the following:

a. Any records series that contains the results of a matching program, as defined in s. 19.62 (3), if the state agency using the records series destroys the records series within one year after the records series was created.

b. Mailing lists.

c. Telephone directories.

d. Records series pertaining exclusively to employees of a state agency.

e. Records series specified by the board that contain personally identifiable information incidental to the primary purpose for which the records series was created, such as the name of a salesperson or a vendor in a records series of purchase orders.

f. Records series relating to procurement or budgeting by a state agency.

3. The registry shall be designed to:

a. Ensure that state agencies are not maintaining any secret records series containing personally identifiable information.

b. Be comprehensible to an individual using the registry so that identification of records series maintained by state agencies that may contain personally identifiable information about the individual is facilitated.

c. Identify who may be contacted for further information on a records series.

**(3L)** EXECUTIVE SECRETARY. The department shall, with the consent of the board and based on qualifications approved by the board, appoint an official in the classified service to oversee the day−to−day execution of the board's duties, to serve as the executive secretary of the board and to coordinate the statewide records management program.

**(3n)** EXEMPT FORMS. The board may not receive or investigate complaints about the forms specified in s. 16.971 (2m).

**(4)** APPROVAL FOR DISPOSITION OF RECORDS. (a) All public records made or received by or in the custody of a state agency shall be and remain the property of the state. Those public records may not be disposed of without the written approval of the board.

(b) State agencies shall submit records retention schedules for all public records series in their custody to the board for its approval within one year after each record series has been received or created unless a shorter period of retention is authorized by law, in which case a retention schedule shall be submitted within that period. The board may alter retention periods for any records series; but if retention for a certain period is specifically required by law, the board may not decrease the length of that period. The board may not authorize the destruction of any public records during the period specified in s. 19.35 (5).

(c) A records retention schedule approved by the board on or after March 17, 1988, is effective for 10 years, unless otherwise specified by the board. At the end of the effective period, an agency shall resubmit a retention schedule for approval by the board. During the effective period, if approved by the board and the board has assigned a disposal authorization number to the public record or record series, a state agency may dispose of a public record or record series according to the disposition requirements of the schedule without further approval by the board.

**(5)** TRANSFER OF PUBLIC RECORDS TO OPTICAL DISC OR ELECTRONIC FORMAT. (a) Subject to rules promulgated by the department under s. 16.611, any state agency may transfer to or maintain in optical disc or electronic format any public record in its custody and retain the public record in that format only.

(b) Subject to rules promulgated by the department under s. 16.611, state agencies shall maintain procedures to ensure the authenticity, accuracy, reliability, and accessibility of public records transferred to or maintained in optical disc or electronic format under par. (a).

(c) Subject to rules promulgated by the department under s. 16.611, state agencies that transfer to or maintain in optical disc or electronic format public records in their custody shall ensure that the public records stored in that format are protected from unauthorized destruction.

**(6)** PROCEDURE FOR MICROFILM REPRODUCTION OF PUBLIC RECORDS. Any state agency desiring to microfilm public records shall submit a request to the board for the microfilm reproduction of each records series to be reproduced together with any information the board requires. In granting or denying approval, the board shall consider factors such as the long−term value of the public records, the cost−effectiveness of microfilm reproduction compared with other records management techniques and the technology appropriate for the specific application. Upon receiving written approval from the board, any state agency may cause any public record to be microfilmed in compliance with this section and rules adopted pursuant thereto.

**(7)** WHEN COPY DEEMED ORIGINAL RECORD; STANDARDS FOR REPRODUCTION OF PUBLIC RECORDS. (a) Any microfilm reproduction of an original record, or a copy generated from an original record stored in optical disc or electronic format, is deemed an original public record if all of the following conditions are met:

**NOTE: Sub (7) (title) gives effect to 1991 Act 39 and 2015 Wis. Act 196. Sub. (7) (title) was amended in 1991 Act 39 but that title was but inadvertently omitted from the 1993 to 2013 statutes. 2015 Wis. Act 196 created a new title for sub. (7) as all other subsections in s. 16.61 had titles.**

1. Any device used to reproduce the record on film or to transfer the record to optical disc or electronic format and generate a copy of the record from optical disc or electronic format accurately reproduces the content of the original.

2. The reproduction is on film that complies with the minimum standards of quality for microfilm reproductions, as established by rule of the board, or the optical disc or electronic copy and the copy generated from optical disc or electronic format comply with the minimum standards of quality for such copies, as established by rule of the department under s. 16.611.

3. The film is processed and developed in accordance with the minimum standards established by the board.

4. The record is arranged, identified, and indexed so that any individual document or component of the record can be located with the use of proper equipment.

5. The state agency records and forms officer or other person designated by the head of the state agency or the custodian of any other record executes a statement of intent and purpose describing the record to be reproduced or transferred to optical disc or electronic format, the disposition of the original record, the disposal authorization number assigned by the board for public records of state agencies, the enabling ordinance or resolution for cities, towns, villages, or school districts, or the resolution that authorizes the reproduction, optical imaging, or electronic formatting for counties when required, and executes a certificate verifying that the record was received or created and microfilmed or transferred to optical disc or electronic format in the normal course of business and that the statement of intent and purpose is properly recorded as directed by the board.

(b) The statement of intent and purpose executed under par. (a) 5. is presumptive evidence of compliance with all conditions and standards prescribed by this subsection.

(c) Any microfilm reproduction of an original record which was made prior to April 18, 1986, in accordance with the standards in effect under the applicable laws and rules for authenticating the record at the time the reproduction was made is deemed an original record.

**(8)** ADMISSIBLE IN EVIDENCE. (a) Any microfilm reproduction of a public record meeting the requirements of sub. (7) or copy of a public record generated from an original record stored in optical disc or electronic format in compliance with this section shall be taken as, stand in lieu of, and have all the effect of the original document and shall be admissible in evidence in all courts and all other tribunals or agencies, administrative or otherwise, in all cases where the original document is admissible.

(b) Any enlarged copy of a microfilm reproduction of a public record made as provided by this section or any enlarged copy of a public record generated from an original record stored in optical disc or electronic format in compliance with this section that is certified by the custodian as provided in s. 889.08 shall have the same force as an actual−size copy.

**(9)** PRESERVATION OF REPRODUCTIONS. Provision shall be made for the preservation of any microfilm reproductions of public records and of any public records stored in optical disc or electronic format in conveniently accessible files in the agency of origin or its successor or in the state archives.

**(10)** CONTRACTS FOR COPYING. Contracts for microfilm reproduction, optical imaging or electronic storage of public records to be performed as provided in this section shall be made by the secretary as provided in ss. 16.70 to 16.77 and the cost of making such reproductions or optical discs or of electronic storage shall be paid out of the appropriation of the state agency having the reproduction made or the storage performed.

**(11)** AUTHORITY TO REPRODUCE RECORDS. Nothing in this section shall be construed to prohibit the responsible officer of any state agency from reproducing any document by any method when it is necessary to do so in the course of carrying out duties or functions in any case other than where the original document is to be destroyed; but no original public record may be destroyed after microfilming, optical imaging or electronic storage without the approval of the board unless authorized under sub. (4) or (5).

**(12)** ACCESS TO REPRODUCTIONS AND COPIES. All persons may examine and use the microfilm reproductions of public records and copies of public records generated from optical disc or electronic storage subject to such reasonable rules as may be made by the responsible officer of the state agency having custody of the same.

**(13)** HISTORICAL SOCIETY AND UNIVERSITY ARCHIVES AS DEPOSITORIES. (a) The historical society, as trustee for the state, shall be the ultimate depository of the archives of the state, and the board may transfer to the society such original records and reproductions as it deems proper and worthy of permanent preservation, including records and reproductions which the custodian thereof has been specifically directed by statute to preserve or keep in the custodian's office. The permanent preservation of records of the University of Wisconsin System may be accomplished under par. (b). The society may deposit in the regional depositories established under s. 44.10, title remaining with the society, the records of state agencies or their district or regional offices which are primarily created in the geographic area serviced by the depository, but the records of all central departments, offices, establishments and agencies shall remain in the main archives in the capital city under the society's immediate jurisdiction, except that the society may place the records temporarily at a regional depository for periods of time to be determined by the society. Nothing in this subsection nor in ch. 44 prevents the society's taking the steps for the safety of articles and materials entrusted to its care in library, museum or archives, including temporary removal to safer locations, dictated by emergency conditions arising from a state of war, civil rebellion or other catastrophe.

(b) The board may designate an archival depository at each university as defined in s. 36.05 (13) which shall meet standards for university archival depositories established by the board with the advice of the board of regents and the historical society or their respective designated representatives. The board may transfer to the appropriate university archival depository all original records and reproductions the board deems worthy of permanent preservation.

(c) The historical society shall, in cooperation with the staff of the board, as soon as practicable, adequately and conveniently classify and arrange the state records or other official materials transferred to its care, for permanent preservation under this section and keep the records and other official materials accessible to all persons interested, under proper and reasonable rules promulgated by the historical society, consistent with s. 19.35. Copies of the records and other official materials shall, on application of any citizen of this state interested therein, be made and certified by the director of the historical society, or an authorized representative in charge, which certificate shall have the same force as if made by the official originally in charge of them.

(d) 1. Except as provided in subd. 2., records which have a confidential character while in the possession of the original custodian shall retain their confidential character after transfer to the historical society unless the board of curators of the historical society, with the concurrence of the original custodian or the custodian's legal successor, determines that the records shall be made accessible to the public under such proper and reasonable rules as the historical society promulgates. If the original custodian or the custodian's legal successor is no longer in existence, confidential records formerly in that person's possession may not be released by the board of curators unless the release is first approved by the public records board. For public records and other official materials transferred to the care of the university archival depository under par. (b), the chancellor of the university preserving the records shall have the power and duties assigned to the historical society under this section.

2. Notwithstanding subd. 1., a record which is transferred to an archival depository under this subsection and which has a confidential character shall be open to inspection and available for copying 75 years after creation of the record unless the custodian, pursuant to ss. 19.34 and 19.35, determines that the record shall be kept confidential.

(e) This subsection does not apply to patient health care records, as defined in s. 146.81 (4), that are in the custody or control of the department of health services.

**History:** 1975 c. 41 ss. 15, 52; 1975 c. 198 s. 65; 1975 c. 199; Stats. 1975 s. 16.61; 1977 c. 418; 1979 c. 32, 79, 93; 1979 c. 361 s. 113; 1981 c. 335; 1981 c. 350 ss. 9 to 12, 13; 1981 c. 391; 1983 a. 27, 524; 1985 a. 180 ss. 5 to 17, 30m; 1985 a. 332 s. 251 (1); 1987 a. 147 ss. 1 to 16, 25; 1987 a. 186; 1989 a. 31, 107, 248, 359; 1991 a. 39, 185, 269, 285, 315; 1993 a. 172, 213; 1995 a. 27 ss. 309 to 347, 9126 (19); 1995 a. 216, 225; 2001 a. 16; 2003 a. 33; 2007 a. 20 s. 9121 (6) (a); 2009 a. 42 ss. 2, 152; 2015 a. 196.

**Cross−reference:** See also s. Adm 12.01, Wis. adm. code.

**16.611 State public records; optical disc and electronic storage. (1)** In this section, "public records" has the meaning given under s. 16.61 (2) (b).

**(2)** (a) The department shall prescribe, by rule, procedures for the transfer of public records and records of the University of Wisconsin Hospitals and Clinics Authority and of the Wisconsin Aerospace Authority to optical disc or electronic format and for the maintenance of such records stored in optical disc or electronic format, including procedures to ensure the authenticity, accuracy, reliability, and accessibility of any public records or records of the University of Wisconsin Hospitals and Clinics Authority or of the Wisconsin Aerospace Authority so transferred and procedures to

ensure that such records are protected from unauthorized destruction.

(b) The department shall prescribe, by rule, procedures governing the operation of its optical disc and electronic storage facility under s. 16.62 (1) (bm).

(c) The department shall prescribe, by rule, qualitative standards for optical discs and for copies of documents generated from optical discs used to store public records and records of the University of Wisconsin Hospitals and Clinics Authority and of the Wisconsin Aerospace Authority.

(d) The department shall prescribe, by rule, qualitative standards for the storage of public records in electronic format and for copies of public records stored in electronic format.

**(3)** Prior to submitting any proposed rule prescribed under sub. (2) to the legislative council staff under s. 227.15 (1), the department shall refer the proposed rule to the public records board for its recommendations.

**History:** 1991 a. 39; 1995 a. 27, 216; 2005 a. 335; 2015 a. 196.
**Cross−reference:** See also s. Adm 12.01, Wis. adm. code.

**16.612 Local government records; optical disc and electronic storage standards. (1)** In this section, "local governmental unit" has the meaning given under s. 19.42 (7u).

**(2)** (a) The department shall prescribe, by rule, qualitative standards for optical discs and for copies of documents generated from optical discs used to store materials filed with local governmental units. Prior to submitting any such rule to the legislative council staff under s. 227.15 (1), the department shall refer the rule to the public records board for its recommendations.

(b) The department shall prescribe, by rule, qualitative standards for the storage of public records in electronic format and for copies of documents generated from electronically stored materials filed with local governmental units. Prior to submitting any such rule to the legislative council staff under s. 227.15 (1), the department shall refer the rule to the public records board for its recommendations.

**History:** 1991 a. 39; 1993 a. 172; 1995 a. 27; 2015 a. 196.
**Cross−reference:** See also s. Adm 12.01, Wis. adm. code.

**16.62 Records management service. (1)** The department shall establish and maintain a records management service:

(a) To advise and assist state agencies and the University of Wisconsin Hospitals and Clinics Authority in the establishment and operation of records management programs through the issuance of standards and procedures and provision of technical and management consulting services.

(b) To operate a state records center and a central microfilm facility for state agencies and the University of Wisconsin Hospitals and Clinics Authority and to promulgate rules necessary for efficient operation of the facilities.

(bm) To operate a storage facility for storage of public records and records of the University of Wisconsin Hospitals and Clinics Authority in optical disc or electronic format in accordance with rules, promulgated by the department under s. 16.611, governing operation of the facility.

(c) To periodically audit the records management programs of state agencies and the University of Wisconsin Hospitals and Clinics Authority and recommend improvements in records management practices.

**(2)** The department may establish user charges for records storage and retrieval services, with any moneys collected to be credited to the appropriation account under s. 20.505 (1) (im) or (kb). Such charges shall be structured to encourage efficient utilization of the services.

**(3)** The department may establish user fees for the services of the public records board. Any moneys collected shall be credited to the appropriation account under s. 20.505 (1) (kb).

**History:** 1975 c. 41, 224; Stats. 1975 s. 16.62; 1977 c. 29, 418; 1979 c. 34 s. 2102 (1) (b), (c); 1979 c. 175; 1981 c. 350; 1983 a. 27 ss. 87, 88, 1804 to 1806; 1985 a. 180 s. 30m; 1987 a. 27; 1987 a. 147 s. 25; 1991 a. 39; 1995 a. 27, 216; 2001 a. 16; 2015 a. 196.

**16.63 Sale of state's rights to tobacco settlement agreement payments. (1)** In this section:

(a) "Purchaser" means any person who has purchased the state's right to receive any of the payments under the tobacco settlement agreement.

(b) "Tobacco settlement agreement" means the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998.

(c) "Tobacco settlement revenues" means the right to receive settlement payments arising from or pursuant to the tobacco settlement agreement and all direct or indirect proceeds of that right.

**(2)** Before July 1, 2009, the secretary may sell for cash or other consideration the state's right to receive any of the payments under the tobacco settlement agreement.

**(3)** The secretary may organize one or more nonstock corporations under ch. 181 or limited liability companies under ch. 183 for any purpose related to the sale of the state's right to receive any of the payments under the tobacco settlement agreement and may take any action necessary to facilitate and complete the sale.

**(3m)** (a) If the secretary sells the state's right to receive any of the payments under the tobacco settlement agreement, the secretary shall require, as a condition of the sale, that the purchaser notify the secretary if any bonds or other obligations are issued that are secured by any of the payments and provide the secretary with all information on the distribution of the bond or obligation proceeds.

(b) The secretary shall submit a report to the joint committee on finance that includes all of the information provided to the secretary by the purchaser under par. (a).

**(4)** (a) Tobacco settlement revenues may not be considered proceeds of any property that is not tobacco settlement revenues.

(b) Except as otherwise provided in this subsection, the creation, perfection, and enforcement of security interests in tobacco settlement revenues are governed by ch. 409. Notwithstanding ch. 409, with regard to creating, perfecting, and enforcing a valid security interest in tobacco settlement revenues:

1. If this state or the Wisconsin Health and Educational Facilities Authority is the debtor in the transaction, the proper place to file the required financing statement to perfect the security interest is the department of financial institutions.

2. The required financing statement shall include a description of collateral that describes the collateral as general intangibles consisting of the right to receive settlement payments arising from or pursuant to the tobacco settlement agreement and all proceeds of that right. The required financing statement may include any additional description of collateral that is legally sufficient under the laws of this state.

3. The tobacco settlement revenues are general intangibles for purposes of ch. 409.

4. A security interest perfected under this paragraph is enforceable against the debtor, any assignee or grantee, and all 3rd parties, including creditors under any lien obtained by judicial proceedings, subject only to the rights of any 3rd parties holding security interests in the tobacco settlement revenues previously perfected under this paragraph. Unless the applicable security agreement provides otherwise, a perfected security interest in the tobacco settlement revenues is a continuously perfected security interest in all tobacco settlement revenues existing on the date of the agreement or arising after the date of the agreement. A security interest perfected under this paragraph has priority over any other lien created by operation of law or otherwise, which subsequently attaches to the tobacco settlement revenues.

5. The priority of a security interest created under this paragraph is not affected by the commingling of proceeds arising from the tobacco settlement revenues with other amounts.

(c) The sale, assignment, and transfer of tobacco settlement revenues are governed by this paragraph. All of the following apply to a sale, assignment, or transfer under this paragraph:

1. The sale, assignment, or transfer is an absolute transfer of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the tobacco settlement revenues, if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. After such a transaction, the tobacco settlement revenues are not subject to any claims of the seller or the seller's creditors, other than creditors holding a prior security interest in the tobacco settlement revenues perfected under par. (b).

2. The characterization of the sale, assignment, or transfer as an absolute transfer under subd. 1. and the corresponding characterization of the purchaser's property interest is not affected by any of the following factors:

a. Commingling of amounts arising with respect to the tobacco settlement revenues with other amounts.

b. The retention by the seller of a partial or residual interest, including an equity interest, in the tobacco settlement revenues, whether direct or indirect, or whether subordinate or otherwise.

c. The sale, assignment, or transfer of only a portion of the tobacco settlement revenues or an undivided interest in the tobacco settlement revenues.

d. Any recourse that the purchaser or its assignees may have against the seller.

e. Whether the seller is responsible for collecting payments due under the tobacco settlement revenues or for otherwise enforcing any of the tobacco settlement revenues or retains legal title to the tobacco settlement revenues for the purpose of these collection activities.

f. The treatment of the sale, assignment, or transfer for tax purposes.

3. The sale, assignment, or transfer is perfected automatically as against 3rd parties, including any 3rd parties with liens created by operation of law or otherwise, upon attachment under ch. 409.

4. Nothing in this subsection precludes consideration of the factors listed in subd. 2. a. to e. in determining whether the sale, assignment, or transfer is a sale for tax purposes. The characterization of the sale, assignment, or transfer as an absolute transfer under subd. 1. may not be considered in determining whether the sale, assignment, or transfer is a sale for tax purposes.

**(5)** If the secretary sells the state's right to receive any of the payments under the tobacco settlement agreement, the state pledges to and agrees with any purchaser or subsequent transferee of the state's right to receive any of the payments under the tobacco settlement agreement that the state will not limit or alter its powers to fulfill the terms of the tobacco settlement agreement, nor will the state in any way impair the rights and remedies provided under the tobacco settlement agreement. The state also pledges to and agrees with any purchaser or subsequent transferee of the state's right to receive any of the payments under the tobacco settlement agreement that the state will pay all costs and expenses in connection with any action or proceeding brought by or on behalf of the purchaser or any subsequent transferee related to the state's not fulfilling the terms of the tobacco settlement agreement. The secretary may include this pledge and agreement of the state in any contract that is entered into by the secretary under this section.

**(6)** If the secretary sells the state's right to receive any of the payments under the tobacco settlement agreement, the state pledges to and agrees with any purchaser or subsequent transferee of the state's right to receive any of the payments under the tobacco settlement agreement that the state will not limit or alter the powers of the secretary under this section until any contract that is entered into under this section is fully performed, unless adequate provision is made by law for the protection of the rights and remedies of the purchaser or any subsequent transferee under the contract. The secretary may include this pledge and agreement of the state in any contract that is entered into by the secretary under this section.

**(8)** This subsection and subs. (8m) and (9) shall govern all civil claims, suits, proceedings, and actions brought against the state relating to the sale of the state's right to receive any of the payments under the tobacco settlement agreement. If the state fails to comply with this section or the terms of any agreement relating to the sale of the state's right to receive any of the payments under the tobacco settlement agreement, an action to compel compliance may be commenced against the state.

**(8m)** If the recovery of a money judgment against the state is necessary to give the plaintiff in an action under sub. (8) complete relief, a claim for the money damages may be joined with the claim commenced under sub. (8).

**(9)** Sections 16.007, 16.53, and 775.01 do not apply to claims against the state under sub. (8) or (8m). If there is a final judgment against the state in such an action, the judgment shall be paid as provided in s. 775.04 together with interest at the rate of 10 percent per year from the date such payment was judged to have been due until the date of payment of the judgment.

**History:** 2001 a. 16, 104; 2005 a. 253; 2007 a. 226.

**16.64 College tuition and expenses program. (1)** DEFINITIONS. In this section:

(a) "Board" means the board of regents of the University of Wisconsin System.

(b) "Institution of higher education" means an eligible educational institution, as defined under 26 USC 529.

**(2)** WEIGHTED AVERAGE TUITION; TUITION UNIT COST. Annually, the department and the board jointly shall determine all of the following:

(a) The weighted average tuition of bachelor's degree−granting institutions within the University of Wisconsin System for the academic year that begins on or after the first day of August of the current year. The amount shall be calculated as follows:

1. For each such institution, multiply the tuition charged a full−time undergraduate who is a resident of this state by the number of full−time equivalent resident undergraduates attending the institution.

2. Add the products under subd. 1.

3. Divide the sum under subd. 2. by the total number of full−time equivalent resident undergraduates attending such institutions.

(b) The price of a tuition unit, which shall be valid for a period determined jointly by the department and the board. The price shall be sufficient to ensure the ability of the department to meet its obligations under this section. To the extent possible, the price shall be set so that the value of the tuition unit in the anticipated academic year of its use will be equal to 1 percent of the weighted average tuition for that academic year plus the costs of administering the program under this section attributable to the unit.

**(3)** COLLEGE TUITION AND EXPENSES CONTRACTS. (a) An individual, trust, legal guardian, or entity described under 26 USC 529 (e) (1) (C) may enter into a contract with the department for the sale of tuition units on behalf of a beneficiary.

(b) The contract shall specify the anticipated academic year of the beneficiary's initial enrollment in an institution of higher education.

(c) The department may charge a purchaser an enrollment fee.

(d) The department shall promulgate rules authorizing a person who has entered into a contract under this subsection to change the beneficiary named in the contract.

**(4)** NUMBER OF TUITION UNITS PURCHASED. A person who enters into a contract under sub. (3) may purchase tuition units at any time and in any number, or may authorize a parent, grandparent, great−grandparent, aunt, or uncle of the beneficiary to purchase tuition units, except that the total number of tuition units purchased on behalf of a single beneficiary may not exceed the number necessary to cover tuition, fees and the costs of room and

board, books, supplies and equipment required for enrollment or attendance of the beneficiary at an institution of higher education.

**(5)** PAYMENT OF TUITION. (a) Except as provided in sub. (7m), if an individual named as beneficiary in a contract under sub. (3) attends an institution of higher education in the United States, each tuition unit purchased on his or her behalf entitles that beneficiary to apply toward the payment of tuition, fees and the costs of room and board, books, supplies and equipment required for enrollment or attendance at the institution an amount equal to 1 percent of the anticipated weighted average tuition of bachelor's degree−granting institutions within the University of Wisconsin System for the year of attendance, as estimated under sub. (2) in the year in which the tuition unit was purchased.

(b) Upon request by the beneficiary, the department shall pay to the institution or beneficiary, whichever is appropriate, in each semester of attendance the lesser of the following:

1. An amount equal to the value of each tuition unit, as determined under par. (a), multiplied by the number of tuition units purchased on behalf of the beneficiary and not used.

2. An amount equal to the sum of the institution's tuition, fees and the costs described in par. (a) for that semester.

**(6)** TERMINATION OF CONTRACT. (a) A contract under sub. (3) may be terminated by the person entering into the contract if any of the following occurs:

1. The beneficiary dies or is permanently disabled.

2. The beneficiary graduates from high school but is unable to gain admission to an institution of higher education after a good faith effort.

3. The beneficiary attended an institution of higher education but involuntarily failed to complete the program in which he or she was enrolled.

4. The beneficiary is at least 18 years old and one of the following applies:

a. The beneficiary has not graduated from high school.

b. The beneficiary has decided not to attend an institution of higher education.

c. The beneficiary attended an institution of higher education but voluntarily withdrew without completing the program in which he or she was enrolled.

5. Other circumstances determined by the department to be grounds for termination.

(b) The department may terminate a contract under sub. (3) if any of the tuition units purchased under the contract remain unused 10 years after the anticipated academic year of the beneficiary's initial enrollment in an institution of higher education, as specified in the contract.

**(7)** REFUNDS. (a) Except as provided in sub. (7m), the department shall do all of the following:

1. When a beneficiary completes the program in which he or she is enrolled, if the beneficiary has not used all of the tuition units purchased on his or her behalf, refund to the person who entered into the contract an amount equal to 1 percent of the anticipated weighted average tuition in the academic year in which the beneficiary completed the program, as estimated under sub. (2) in the year in which the tuition units were purchased, multiplied by the number of tuition units purchased by the person and not used by the beneficiary.

2. If a contract is terminated under sub. (6) (a) 1., 2. or 3., refund to the person who entered into the contract an amount equal to 1 percent of the anticipated weighted average tuition in the academic year in which the contract is terminated, as estimated under sub. (2) in the year in which the tuition units were purchased, multiplied by the number of tuition units purchased by the person and not used by the beneficiary.

3. If a contract is terminated under sub. (6) (a) 4. or (b), refund to the person who entered into the contract an amount equal to 99 percent of the amount determined under subd. 2.

4. If a contract is terminated under sub. (6) (a) 5., refund to the person who entered into the contract the amount under subd. 2. or under subd. 3., as determined by the department.

5. If the beneficiary is awarded a scholarship, tuition waiver or similar subsidy that cannot be converted into cash by the beneficiary, refund to the person who entered into the contract, upon the person's request, an amount equal to the value of the tuition units that are not needed because of the scholarship, waiver or similar subsidy and that would otherwise have been paid by the department on behalf of the beneficiary during the semester in which the beneficiary is enrolled.

(b) The department shall determine the method and schedule for the payment of refunds under this subsection.

**(7m)** TUITION UNIT VALUE ADJUSTMENT; REFUND ADJUSTMENT. (a) The department may adjust the value of a tuition unit based on the actual earnings attributable to the tuition unit less the costs of administering the program under this section that are attributable to the tuition unit if any of the following applies:

1. The individual named as the beneficiary in a contract under sub. (3) wishes to use the tuition unit for the payment of tuition in a year other than the anticipated academic year of attendance, as specified in the contract.

2. The individual named as the beneficiary in a contract under sub. (3), or the person who entered into the contract, wishes to receive a refund under sub. (7) in a year other than the anticipated academic year of the beneficiary's attendance, as specified in the contract.

(b) The department may not increase the value of a tuition unit under par. (a) to an amount that exceeds the value of a tuition unit that was purchased at a similar time, held for a similar period and used or refunded in the anticipated academic year of the beneficiary's attendance, as specified in the contract.

(c) The department may promulgate rules imposing or increasing penalties for refunds under sub. (7) (a) if the department determines that such rules are necessary to maintain the status of the program under this section as a qualified state tuition program under section 529 of the Internal Revenue Code, as defined in s. 71.01 (6).

**(8)** EXEMPTION FROM GARNISHMENT, ATTACHMENT AND EXECUTION. Moneys deposited in the tuition trust fund and a beneficiary's right to the payment of tuition, fees and the costs described in sub. (5) (a) under this section are not subject to garnishment, attachment, execution or any other process of law.

**(9)** CONTRACT WITH ACTUARY. The department shall contract with an actuary or actuarial firm to evaluate annually whether the assets in the tuition trust fund are sufficient to meet the obligations of the department under this section and to advise the department on setting the price of a tuition unit under sub. (2) (b).

**(10)** REPORTS. (a) Annually, the department shall submit a report to the governor, and to the appropriate standing committees of the legislature under s. 13.172 (3), on the program under this section. The report shall include any recommendations for changes to the program that the department determines are necessary to ensure the sufficiency of the tuition trust fund to meet the department's obligations under this section.

(b) The department shall submit a quarterly report to the state investment board projecting the future cash flow needs of the tuition trust fund. The state investment board shall invest moneys held in the tuition trust fund in investments with maturities and liquidity that are appropriate for the needs of the fund as reported by the department in its quarterly reports. All income derived from such investments shall be credited to the fund.

**(11)** CONSTRUCTION. (a) Nothing in this section guarantees an individual's admission to, retention by or graduation from any institution of higher education.

(b) The requirements to pay tuition, fees and the costs of room and board, books, supplies and equipment under sub. (5) and to

make refunds under sub. (7) are subject to the availability of sufficient assets in the tuition trust fund.

**(11m)** FINANCIAL AID CALCULATIONS. The value of tuition units shall not be included in the calculation of a beneficiary's eligibility for state financial aid for higher education if the beneficiary notifies the higher educational aids board and the institution of higher education that the beneficiary is planning to attend that he or she is a beneficiary of a contract under this section and the contract owner agrees to release to the higher educational aids board and the institution of higher education information necessary for the calculation under this subsection.

**(12)** ADDITIONAL DUTIES AND POWERS. (a) The department shall do all of the following:

1. Annually publish a list of the institutions of higher education located in this state and the number of tuition units necessary to pay for one year of full−time attendance as a resident undergraduate at each institution.

2. Actively promote the program under this section.

3. Promulgate rules to implement and administer this section.

(b) The department may do any of the following:

1. Contract with any person for the management and operation of the program or any part of the program under this section.

2. Keep personal and financial information pertaining to a purchaser of tuition units or a beneficiary of tuition units closed to the public.

**(13)** PROGRAM TERMINATION. If the department determines that the program under this section is financially infeasible, the department shall discontinue entering into contracts under sub. (3) and discontinue selling tuition units under sub. (4).

**History:** 1995 a. 403; 1997 a. 27, 158; 1999 a. 9 ss. 52 to 62; Stats. 1999 s. 14.63; 1999 a. 44; 2001 a. 7, 16; 2011 a. 32 s. 75; Stats. 2011 s. 16.64.

**16.641 College savings program. (1)** DEFINITIONS. In this section:

(a) "Account owner" means a person who establishes a college savings account under this section.

(b) "Board" means the college savings program board.

**(2)** DUTIES OF THE BOARD. The board shall do all of the following:

(a) Except as provided in s. 16.255, establish and administer a college savings program that allows an individual, trust, legal guardian, or entity described under 26 USC 529 (e) (1) (C) to establish a college savings account to cover tuition, fees, and the costs of room and board, books, supplies, and equipment required for the enrollment or attendance of a beneficiary at an eligible educational institution, as defined under 26 USC 529.

(b) Ensure that the college savings program meets the requirements of a qualified state tuition plan under 26 USC 529.

(c) Establish investment guidelines for contributions to college savings accounts and pay distributions to beneficiaries and eligible educational institutions.

(d) Provide to each account owner, and to persons who are interested in establishing a college savings account, information about current and estimated future higher education costs, levels of participation in the college savings program that will help achieve educational funding objectives and availability of and access to financial aid.

(e) Promulgate rules to implement and administer this section, including rules that determine whether a withdrawal from a college savings account is a qualified or nonqualified withdrawal, as defined under 26 USC 529, and that impose more than a de minimis penalty, as defined under 26 USC 529, for nonqualified withdrawals.

(f) Seek rulings and guidance from the U.S. department of the treasury, the internal revenue service and the securities and exchange commission to ensure the proper implementation and administration of the college savings program.

(g) Ensure that if the department changes vendors, the balances of college savings accounts are promptly transferred into investment instruments as similar to the original investment instruments as possible.

(h) Keep personal and financial information pertaining to an account owner or a beneficiary closed to the public, except that the board may release to the appropriate state agency information necessary in determining a beneficiary's eligibility for state financial aid for higher education.

(i) Before December 31 of each year, beginning in 2015, ensure that the account balance limitation under sub. (3) (bm) is increased for the subsequent year. The annual increase shall be equal to a percentage that is not less than the most recently published national average tuition and fees percentage increase at private, nonprofit 4−year institutions, as determined by the College Board, or such other nationally reputable entity, and shall be subject to the requirements under 26 USC 529 that pertain to the prohibition on excess contributions.

**(3)** ACCOUNT OWNERS; BENEFICIARIES; CONTRIBUTIONS; TERMINATION OF SAVINGS ACCOUNTS. (a) An account owner may do all of the following:

1. Contribute to a college savings account or authorize any other person to contribute to the account.

2. Select a beneficiary of a college savings account.

3. Change the beneficiary of a college savings account to a family member, as defined under 26 USC 529, of the previous beneficiary.

4. Transfer all or a portion of a college savings account to another college savings account whose beneficiary is a member of the family.

5. Designate a person other than the beneficiary as a person to whom funds may be paid from a college savings account.

6. Receive distributions from a college savings account if no other person is designated.

(b) An individual may be the beneficiary of more than one college savings account, and an account owner may be the beneficiary of a college savings account that the account owner has established.

(bm) Beginning on August 1, 2015, no contribution may be made to an account if the contribution would cause the account balance of a beneficiary's account, or the combined balance of all accounts of a beneficiary, to exceed $425,000. This contribution limitation applies to all accounts that are established on and after that date, and to all accounts that are in existence on that date that have not yet reached the balance limit specified in this paragraph, subject to the annual increase described in sub. (2) (i).

(c) The board shall establish a minimum initial contribution to a college savings account that may be waived if the account owner agrees to contribute to a college savings account through a payroll deduction or automatic deposit plan. The board shall ensure that any such plan permits the adjustment of scheduled deposits because of a change in the account owner's economic circumstances or a beneficiary's educational plans.

(d) An account owner under this section may terminate his or her college savings account if any of the following occurs:

1. The beneficiary dies or is permanently disabled.

2. The beneficiary graduates from high school but is unable to gain admission to an institution of higher education after a good faith effort.

3. The beneficiary attended an institution of higher education but involuntarily failed to complete the program in which he or she was enrolled.

4. The beneficiary is at least 18 years old and one of the following applies:

a. The beneficiary has not graduated from high school.

b. The beneficiary has decided not to attend an institution of higher education.

c. The beneficiary attended an institution of higher education but voluntarily withdrew without completing the program in which he or she was enrolled.

5. Other circumstances determined by the board to be grounds for termination.

(e) The board may terminate a college savings account if any portion of the college savings account balance remains unused 10 years after the anticipated academic year of the beneficiary's initial enrollment in an eligible educational institution.

**(4)** CONTRACTS WITH PROFESSIONALS. The board may enter into a contract for the services of accountants, attorneys, consultants and other professionals to assist in the administration and evaluation of the college savings program.

**(5)** REPORT. Annually, the board shall submit a report to the governor, and to the appropriate standing committees of the legislature under s. 13.172 (3), on the performance of the college savings program, including any recommended changes to the program.

**(6)** CONSTRUCTION. Nothing in this section guarantees an individual's admission to, retention by or graduation from any institution of higher education; a rate of interest or return on a college savings account; or the payment of principal, interest or return on a college savings account.

**(7)** EXEMPTION FROM GARNISHMENT, LIEN, LEVY, ATTACHMENT AND EXECUTION; SECURITY FOR LOAN. (a) An account established under this section is not subject to garnishment, lien, levy, attachment, execution or other process of law.

(b) No interest in a college savings account may be pledged as security for a loan.

**(8)** FINANCIAL AID CALCULATIONS. The balance of a college savings account shall not be included in the calculation of a beneficiary's eligibility for state financial aid for higher education if the beneficiary notifies the higher educational aids board and the eligible educational institution that the beneficiary is planning to attend that he or she is a beneficiary of a college savings account and if the account owner agrees to release to the higher educational aids board and the eligible educational institution information necessary for the calculation under this subsection.

**History:** 1999 a. 44; 2001 a. 7, 38; 2011 a. 32 s. 76; Stats. 2011 s. 16.641; 2013 a. 227; 2015 a. 55.

**Cross−reference:** See also ch. Adm 81, Wis. adm. code.

**16.642 Repayment to the general fund. (1)** The secretary shall transfer from the tuition trust fund, the college savings program trust fund, the college savings program bank deposit trust fund, or the college savings program credit union deposit trust fund to the general fund an amount equal to the amount expended from the appropriations under s. 20.505 (9) (a), 1995 stats., s. 20.585 (2) (a), 2001 stats., and s. 20.585 (2) (am), 2001 stats., when the secretary determines that funds in those trust funds are sufficient to make the transfer. The secretary may make the transfer in installments.

**(2)** Annually, by June 1, the secretary shall submit a report to the joint committee on finance on the amount available for repayment under sub. (1), the amount repaid under sub. (1), and the outstanding balance under sub. (1).

**History:** 2001 a. 16; 2003 a. 33; 2005 a. 478; 2011 a. 32 s. 77; Stats. 2011 s. 16.642.

**16.643 Support accounts for persons with disabilities. (1)** TERMINATION OF ACCOUNT. Upon the death of an account owner whose account is part of a qualified ABLE program under section 529A of the Internal Revenue Code, the account shall terminate, and upon such termination any amount remaining in the account shall be recoverable by the state under s. 49.849 as property of a decedent that is recoverable under that statute. Any amount that remains in the account following such recovery under s. 49.849 shall be paid to the account owner's estate. Recovery authorized under this subsection may relate only to public assistance received by a beneficiary on and after the date on which an account is established.

**(2)** ELIGIBILITY FOR LONG−TERM CARE PROGRAMS. A person who is determining eligibility for an individual for a long−term care program under s. 46.27, 46.275, or 46.277, the family care benefit under s. 46.286, the family care partnership program, the long−term care program defined in s. 46.2899 (1), or any other demonstration program or program operated under a waiver of federal medicaid law that provides long−term care benefits shall exclude from the determination any income from assets accumulated in an account that is part of a qualified ABLE program under section 529A of the Internal Revenue Code.

**History:** 2015 a. 55, 312.

## SUBCHAPTER IV

## PURCHASING

**16.70 Purchasing; definitions.** In ss. 16.70 to 16.78:

**(1b)** "Affiliate" means a person, as defined in s. 77.51 (10), that controls, is controlled by, or is under common control with another person, as defined in s. 77.51 (10).

**(1e)** "Agency" means an office, department, agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority.

**(2)** "Authority" means a body created under subch. II of ch. 114 or under ch. 231, 232, 233, 234, 237, or 279.

**(2m)** "Computer services" means any services in which a computer is utilized other than for personal computing purposes.

**(3)** "Contractual services" includes all services, materials to be furnished by a service provider in connection with services, and any limited trades work involving less than $30,000 to be done for or furnished to the state or any agency.

**(3e)** "Control" means to own, directly or indirectly, more than 10 percent of the interest in or voting securities of a business.

**(3g)** "Cost−benefit analysis" means a comprehensive study to identify and compare the total cost, quality, technical expertise, and timeliness of a service performed by state employees and resources with the total cost, quality, technical expertise, and timeliness of the same service obtained by means of a contract for contractual services.

**(3m)** "Educational technology" has the meaning given in s. 16.99 (3).

**(4)** "Executive branch agency" means an agency in the executive branch but does not include the building commission.

**(4m)** "Information technology" has the meaning given in s. 16.97 (6).

**(5)** "Judicial branch agency" means an agency created under ch. 757 or 758 or an agency created by order of the supreme court.

**(6)** "Legislative service agency" means an agency created under ch. 13 which is authorized, or the head of which is authorized, to appoint subordinate staff, except the building commission.

**(7)** "Limited trades work" means the repair or replacement of existing equipment or building components with equipment or components of the same kind, if the work is not dependent upon the design services of an architect or engineer, and does not alter or affect the performance of any building system, structure, exterior walls, roof or exits, or the fire protection or sanitation of the building. "Limited trades work" includes decorative and surface material changes within a building and minor preventive maintenance to ancillary facilities such as drives, sidewalks and fences.

**(8)** "Municipality" means a county, city, village, town, school district, board of school directors, sewer district, drainage district, technical college district or any other public or quasi−public corporation, officer, board or other body having the authority to award public contracts.

**(9)** "Officer" includes the person or persons at the head of each agency, by whatever title the person or persons may be elsewhere designated.

**(10)** "Permanent personal property" means any and all property which in the opinion of the secretary will have a life of more than 2 years.

**(10m)** "Personal computing" means utilizing a computer that is located at the work station where the input or output of data is conducted.

**(11)** "Recovered material" means a product which is recovered from solid waste in a form identical to the original form for a use that is the same as or similar to the original use.

**(12)** "Recycled material" means a product which is manufactured from solid waste or paper mill sludge.

**(13)** "Recycled or recovered content" means the proportion of an item, by weight or other measure, which is recycled material or recovered material.

**(14)** "State" does not include a district created under subch. II, III, IV, or V of ch. 229.

**(15)** "Telecommunications" has the meaning given in s. 16.97 (10).

**(16)** "Voting securities" means securities that confer upon the holder the right to vote for the election of members of the board of directors or similar governing body of a business, or are convertible into, or entitle the holder to receive upon their exercise, securities that confer such a right to vote.

**History:** 1971 c. 164; 1975 c. 41 s. 52; 1977 c. 29; 1979 c. 34, 221; 1983 a. 27, 106; 1985 a. 29 ss. 122a to 122f, 3200 (1); 1987 a. 292, 399; 1989 a. 335; 1991 a. 39, 189; 1993 a. 263, 399; 1995 a. 27, 56; 1997 a. 27; 1999 a. 65, 167; 2001 a. 16, 38; 2003 a. 33; 2005 a. 74, 89, 335; 2007 a. 20, 97; 2009 a. 28; 2011 a. 10, 229; 2013 a. 20, 165, 166.

"Contractual services" include technical and professional services. 65 Atty. Gen. 251.

**16.701 Subscription service and procurement system. (1)** The department may provide a subscription service containing current information of interest to prospective vendors concerning state procurement opportunities. If the department provides the service, the department shall assist small businesses, as defined in s. 16.75 (4) (c), who are prospective vendors in accessing and using the service by providing facilities or services to the businesses. The department may charge a fee for any such service. The department shall prescribe the amount of any fee by rule.

**(1m)** The department may provide an electronic procurement system to manage all aspects of procurement under this subchapter. The electronic procurement system may supplement or supplant the subscription service under sub. (1), and the department may permit prospective vendors to provide product or service information, as provided in sub. (2), through the electronic procurement system. If the department provides an electronic procurement system under this subsection, the department may require that an agency use the system. The department may assess agencies and vendors for the costs of the system under this subsection in accordance with a method the department develops.

**(2)** The department may permit prospective vendors to provide product or service information through the service established under sub. (1). The department may prescribe fees or establish fees through a competitive process for the use of the service under this subsection.

**History:** 1995 a. 27, 351; 2001 a. 16; 2013 a. 20.

**Cross−reference:** See also s. Adm 9.01, Wis. adm. code.

**16.7015 Bidders list.** The department may maintain a bidders list. The bidders list shall include the names and addresses of all persons who request to be notified of bids or competitive sealed proposals, excluding those to be awarded under s. 16.75 (1) (c) or (2m) (c), that are solicited by the department or other agency for the procurement of materials, supplies, equipment, or contractual services under this subchapter. Any bidders list may include the names and addresses of any person who requests to be notified of bids or competitive sealed proposals that are solicited by any agency. The department or other agency shall notify each person on the bidders list of all bids or competitive sealed proposals that are solicited by the department or other agency. The department may remove any person from the bidders list for cause.

**History:** 1995 a. 351; 2001 a. 16; 2013 a. 20.

**16.705 Contractual services. (1)** The department or its agents may contract for services which can be performed more economically or efficiently by such contract. The department shall, by rule, prescribe uniform procedures for determining whether services are appropriate for contracting under this subsection.

**(1b)** The determinations under sub. (1) do not apply to a contract entered into by any of the following:

(a) The department under s. 16.25 (4) (b).

(b) The department of corrections for global positioning system tracking services under s. 301.48 (3) or 301.49.

(c) The department under s. 16.848 (1).

**(1r)** Notwithstanding s. 16.75 (2m) and (3m), and except as provided in s. 16.75 (2) (b) and (7), the department and its agents may purchase contractual services only if those services are performed within the United States. This requirement does not apply to any of the following:

(a) Contractual services that are not available to be performed within the United States.

(b) Contractual services if the payment for any part of the contractual services is made from federal moneys.

(c) The renewal, modification, or extension of any contract in effect on March 18, 2010.

(d) Contractual services purchased by the Board of Regents of the University of Wisconsin System with moneys appropriated under s. 20.285 (1) (ge), (u), or (w).

(e) Contractual services purchased by the University of Wisconsin−Madison with moneys appropriated under s. 20.285 (1) (ge), (u), or (w).

**(2)** (a) The department shall promulgate rules for the procurement of contractual services by the department and its designated agents, including but not limited to rules prescribing approval and monitoring processes for contractual service contracts; except as provided in par. (b), a requirement for agencies to conduct a uniform cost−benefit analysis of each proposed contractual service procurement involving an estimated expenditure of more than $50,000 in accordance with standards prescribed in the rules; and, except as provided in par. (b), a requirement for agencies to review periodically, and before any renewal, the continued appropriateness of contracting under each contractual services agreement involving an estimated expenditure of more than $50,000.

(b) A cost−benefit analysis or continued appropriateness review is not required for the following services:

1. Services that federal or state law requires to be performed by contract.

2. Services that must be provided per a contract, license, or warranty, by the original equipment manufacturer or publisher.

3. Services that cannot be performed by state employees because the state lacks the required infrastructure.

4. Web−based software application services that are delivered and managed remotely.

(c) Each officer requesting approval to engage any person to perform contractual services shall submit to the department written justification for such contracting which shall include a description of the contractual services to be procured, justification of need, justification for not contracting with other agencies, a specific description of the scope of contractual services to be performed, and justification for the procurement process if a process other than competitive bidding is to be used. The department may not approve any contract for contractual services unless it is satis-

fied that the justification for contracting conforms to the requirements of this section and ss. 16.71 to 16.77.

**(5)** The department shall promulgate rules to assure that the process used for selection of persons to perform contractual services includes a review of the independence and relationship, if any, of the contractor to employees of the agency, disclosure of any former employment of the contractor or employees of the contractor with the agency and a procedure to minimize the likelihood of selection of a contractor who provides or is likely to provide services to industries, client groups or individuals who are the object of state regulation or the recipients of state funding to a degree that the contractor's independence would be compromised.

**(6)** If the agency for which contractual services are performed under a contractual services agreement concludes that the performance was unsatisfactory, the agency shall file with the department an evaluation of the contractor's performance within 60 days after the fulfillment of the agreement. The evaluation shall be in such form as the secretary may require.

**(7)** The department shall review evaluations submitted under sub. (6) and promulgate rules prescribing procedures to assure that future contracts for contractual services are not awarded to contractors whose past performance is found to be unsatisfactory, to the extent feasible.

**(8)** The department shall, annually on or before October 15, submit to the governor, the joint committee on finance, the joint legislative audit committee and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3), a report concerning the number, value and nature of contractual service procurements authorized for each agency during the preceding fiscal year. The report shall also include, with respect to contractual service procurements by agencies for the preceding fiscal year:

(a) A summary of the cost−benefit analyses completed by agencies in compliance with rules promulgated by the department under sub. (2).

(b) Recommendations for elimination of unneeded contractual service procurements and for consolidation or resolicitation of existing contractual service procurements.

**(9)** The department shall maintain a list of persons that are or have been a party to a contract with the state under this subchapter who have violated a provision of this subchapter or a contract under this subchapter. The parties on the list are ineligible for state contracts and no state contract may be awarded to a party on the ineligible list. The department may remove any party from the ineligible list if the department determines that the party's practices comply with this subchapter and provide adequate safeguards against future violations of this subchapter or contracts under this subchapter.

**History:** 1977 c. 196 s. 31; Stats. 1977 s. 16.705; 1981 c. 20; 1983 a. 27; 1985 a. 29 s. 3200 (1); 1985 a. 332 s. 251 (1); 1987 a. 186; 1989 a. 125; 1999 a. 105; 2003 a. 33 ss. 201, 9160; 2005 a. 89, 142, 431; 2009 a. 28, 136; 2011 a. 10, 32, 266; 2013 a. 20 ss. 79 to 84, 2365m, 9448; 2015 a. 55.

**Cross−reference:** See also ch. Adm 10, Wis. adm. code.

Procuring statutes and regulations, such as Adm Ch. 10, Wis. Adm. Code, are designed to prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as to ensure that the public receives the best work at the most reasonable price practicable. As such, these regulations are intended for the benefit and protection of the public and not of the individual bidder. PRN Associates LLC v. DOA, 2009 WI 53, 317 Wis. 2d 656, 766 N.W.2d 559, 07−0476.

It is possible for the state to lease one of its parking facilities to an independent contractor upon a finding that an independent contractor can perform the service of operating and maintaining the parking facility more economically or more efficiently than the civil service system. 62 Atty. Gen. 183.

**16.71 Purchasing; powers. (1)** Except as otherwise required under this section and s. 16.78 or as authorized in s. 16.74, the department shall purchase and may delegate to special designated agents the authority to purchase all necessary materials, supplies, equipment, all other permanent personal property and miscellaneous capital, and contractual services and all other expense of a consumable nature for all agencies. In making any delegation, the department shall require the agent to adhere to all requirements imposed upon the department in making purchases under this subchapter. All materials, services and other things and expense furnished to any agency and interest paid under s. 16.528 shall be charged to the proper appropriation of the agency to which furnished.

**(1m)** The department shall not delegate to any executive branch agency, other than the board of regents of the University of Wisconsin System, the authority to enter into any contract for materials, supplies, equipment, or contractual services relating to information technology or telecommunications prior to review and approval of the contract by the department. The department may delegate this authority to the University of Wisconsin−Madison. No executive branch agency, other than the board of regents of the University of Wisconsin System, may enter into any such contract without review and approval of the contract by the department. The University of Wisconsin−Madison may enter into any such contract without review and approval by the department. Any executive branch agency that enters into a contract relating to information technology under this section shall comply with the requirements of s. 16.973 (13). Any delegation to the board of regents of the University of Wisconsin System or to the University of Wisconsin−Madison is subject to the limitations prescribed in s. 36.585.

**(2)** The department of administration shall delegate authority to make all purchases for prison industries to the department of corrections. This delegation may be withdrawn by the department of administration only with the consent of, and in accordance with the terms specified by, the joint committee on finance, for failure to comply with applicable purchasing rules, procedures or statutory requirements.

**(3)** If the department makes or delegates to the department of revenue or to any other designated purchasing agent under sub. (1) the authority to make a major procurement, as defined in s. 565.01 (4), for the department of revenue, the department, department of revenue or designated purchasing agent shall comply with the requirements under s. 565.25.

**(4)** The department shall delegate to the Board of Regents of the University of Wisconsin System and to the University of Wisconsin−Madison the authority to enter into contracts for materials, supplies, equipment, or services that relate to higher education and that agencies other than the University of Wisconsin−System do not commonly purchase.

**(5m)** The department shall delegate authority to the department of corrections to enter into contracts for global positioning system tracking equipment, implementation, and tracking services under ss. 301.48 (3) and 301.49.

**(6)** The department may assess any agency or municipality to which it provides services under this subchapter for the cost of the services provided to the agency or municipality. The department may also identify savings that the department determines to have been realized by an agency to which it provides services under this subchapter and may assess the agency for not more than the amount of the savings identified by the department.

**History:** 1977 c. 418; 1983 a. 333; 1985 a. 29, 300; 1987 a. 119; 1989 a. 31; 1991 a. 39, 269; 1995 a. 27; 1997 a. 27; 1999 a. 105; 2001 a. 16; 2003 a. 33; 2005 a. 25, 142, 431; 2007 a. 20; 2011 a. 32, 266; 2013 a. 20 ss. 2365m, 9448; 2015 a. 55.

**Cross−reference:** See also ch. Adm 7 and s. Adm 10.13, Wis. adm. code.

The applicability of ch. 16, subch. IV is determined by the purpose for the purchase, not the source of funds. 64 Atty. Gen. 4.

**16.72 Purchasing, duties. (1)** The department of administration shall check or have checked, as to quantity and quality, the delivery to agencies of all purchases made under s. 16.71.

**(2)** (a) The department shall prepare standard specifications, as far as possible, for all state purchases. By "standard specifications" is meant a specification, either chemical or physical or both, prepared to describe in detail the article which the state desires to purchase, and trade names shall not be used. On the formulation, adoption and modification of any standard specifications, the department of administration shall also seek and be accorded without cost, the assistance, advice and cooperation of other agen-

cies and officers. Each specification adopted for any commodity shall, insofar as possible, satisfy the requirements of any and all agencies which use it in common.

(b) Except as provided in ss. 16.25 (4) (b), 16.751, and 565.25 (2) (a) 4., the department shall prepare or review specifications for all materials, supplies, equipment, other permanent personal property and contractual services not purchased under standard specifications. Such "nonstandard specifications" may be generic or performance specifications, or both, prepared to describe in detail the article which the state desires to purchase either by its physical properties or by its programmatic utility. When appropriate for such nonstandard items or services, trade names may be used to identify what the state requires, but wherever possible 2 or more trade names shall be designated and the trade name of any Wisconsin producer, distributor or supplier shall appear first.

(c) To the extent possible, the department shall write specifications so as to permit the purchase of materials manufactured in the United States, as defined in s. 16.754 (1).

(e) In writing the specifications under this subsection, the department and any other designated purchasing agent under s. 16.71 (1) shall incorporate requirements for the purchase of products made from recycled materials and recovered materials if their use is technically and economically feasible. Each authority other than the University of Wisconsin Hospitals and Clinics Authority and the Lower Fox River Remediation Authority, in writing specifications for purchasing by the authority, shall incorporate requirements for the purchase of products made from recycled materials and recovered materials if their use is technically and economically feasible. The specifications shall include requirements for the purchase of the following materials:

1. Paper and paper products.
2. Plastic and plastic products.
3. Glass and glass products.
4. Motor oil and lubricants.
5. Construction materials, including insulating materials.
6. Furnishings, including rugs, carpets and furniture.
7. Highway equipment, including signs, signposts, reflectors, guardrails, lane dividers and barricades.

(f) In writing specifications under this subsection, the department, any other designated purchasing agent under s. 16.71 (1), and each authority other than the University of Wisconsin Hospitals and Clinics Authority and the Lower Fox River Remediation Authority shall incorporate requirements relating to the recyclability and ultimate disposition of products and, wherever possible, shall write the specifications so as to minimize the amount of solid waste generated by the state, consistent with the priorities established under s. 287.05 (12). All specifications under this subsection shall discourage the purchase of single−use, disposable products and require, whenever practical, the purchase of multiple−use, durable products.

**(4)** (a) Except as provided in ss. 16.71 and 16.74 or as otherwise provided in this subchapter and the rules promulgated under s. 16.74 and this subchapter, all supplies, materials, equipment and contractual services shall be purchased for and furnished to any agency only upon requisition to the department. The department shall prescribe the form, contents, number and disposition of requisitions and shall promulgate rules as to time and manner of submitting such requisitions for processing. No agency or officer may engage any person to perform contractual services without the specific prior approval of the department for each such engagement. Purchases of supplies, materials, equipment or contractual services by the legislature, the courts or legislative service or judicial branch agencies do not require approval under this paragraph.

(b) The department shall promulgate rules for the declaration as surplus of supplies, materials and equipment in any agency and for the transfer to other agencies or for the disposal by private or public sale of supplies, materials and equipment. Except as provided in s. 51.06 (6), in either case, the department shall deposit the net proceeds in the budget stabilization fund, except that the department shall transfer any supplies, materials or equipment declared to be surplus to the department of tourism, upon request of the department of tourism, at no cost, if the transfer is permitted by the agency having possession of the supplies, materials or equipment.

**(4m)** The department shall provide the department of revenue with a copy of each contract for a major procurement, as defined in s. 565.01 (4), for the department of revenue.

**(5)** (a) In this subsection, "materials" has the meaning given in s. 16.754 (1) (c).

(b) The department and the historical society jointly shall promulgate rules identifying types of historically significant materials.

(c) Before an agency may dispose of surplus materials that are of a type identified in rules promulgated under par. (b), the agency shall provide an opportunity for the historical society to inspect and obtain historically significant surplus materials for its collections. The historical society may not be required to compensate an agency for releasing historically significant surplus materials to the historical society under this paragraph.

**(8)** The department may purchase educational technology materials, supplies, equipment, or contractual services from orders placed with the department by school districts, cooperative educational service agencies, technical college districts, the board of regents of the University of Wisconsin System, and the University of Wisconsin−Madison.

**(9)** The department shall ensure that every agency includes on all stationery utilized by the agency for correspondence outside the agency at least one telephone number where the agency may be contacted, at least one facsimile transmission number for the agency, if the agency has such a number, and at least one electronic mail address for the agency, if the agency has such an address.

**History:** 1975 c. 41; 1977 c. 418; 1981 c. 20, 350; 1983 a. 92; 1983 a. 333 ss. 3c, 3g, 3n; 3w; 1985 a. 29 ss. 122g, 3200 (1); 1985 a. 332; 1987 a. 119, 292; 1989 a. 31, 335; 1991 a. 39, 269; 1995 a. 27, 227; 1997 a. 27, 212; 1999 a. 9, 32, 105; 2001 a. 16; 2003 a. 33, 320; 2005 a. 74; 2007 a. 20; 2011 a. 32; 2013 a. 20 ss. 91c, 92c, 2365m, 9448.

**Cross−reference:** See also chs. Adm 5 and 11, Wis. adm. code.

Computer programs may be sold as surplus provided the programs were not created for resale purposes. 59 Atty. Gen. 144.

**16.73 Cooperative purchasing. (1)** The department may enter into an agreement with a municipality or group of municipalities, and municipalities may enter into agreements with each other, under which any of the parties may agree to participate in, administer, sponsor or conduct purchasing transactions under a joint contract for the purchase of materials, supplies, equipment, permanent personal property, miscellaneous capital or contractual services. This subsection does not apply to construction contracts that are subject to s. 16.855 or 66.0901.

**(2)** The department may purchase and store in warehouses articles that may be needed by agencies and municipalities. The department may sell stored articles to municipalities at cost.

**(3)** The department may, upon request, make available to municipalities technical purchasing information including, but not limited to, standard forms, manuals, product specifications and standards and contracts or published summaries of contracts, including price and delivery information.

**(4)** (a) When it is in the best interest of the state and consistent with competitive purchasing practices, the department may enter into agreements with purchasing agents of any other state or the federal government under which any of the parties may agree to participate in, administer, sponsor or conduct purchasing of materials, supplies, equipment, permanent personal property, miscellaneous capital or contractual services. The state may purchase from any vendor selected as a result of such purchasing agreements. This paragraph does not apply to construction contracts that are subject to s. 16.855 or 66.0901.

(b) The department may cooperate with purchasing agents and other interested parties of any other state or the federal government to develop uniform purchasing specifications under s. 16.72 (2) on a regional or national level to facilitate cooperative interstate purchasing transactions.

**(5)** The department or its agents may enter into an agreement with the University of Wisconsin System under which either of the parties may agree to participate in, administer, or conduct purchasing transactions under a contract for the purchase of materials, supplies, equipment, permanent personal property, miscellaneous capital, or contractual services.

**(6)** The department shall administer a program to facilitate purchases of large equipment that is needed by municipalities. The department shall purchase large equipment as a part of the program. The department may, by rule, prescribe requirements for participation in the program and for participation in specific purchases under the program.

**History:** 1983 a. 27; 1985 a. 29 s. 3200 (1); 1989 a. 335; 1995 a. 27; 1999 a. 150 s. 672; 2001 a. 16; 2011 a. 32; 2013 a. 20 ss. 2365m, 9448; 2015 a. 55.

**16.74 Legislative and judicial branch purchasing. (1)** All supplies, materials, equipment, permanent personal property and contractual services required within the legislative branch shall be purchased by the joint committee on legislative organization or by the house or legislative service agency utilizing the supplies, materials, equipment, property or services. All supplies, materials, equipment, permanent personal property and contractual services required within the judicial branch shall be purchased by the director of state courts or the judicial branch agency utilizing the supplies, materials, equipment, property or services.

**(2)** (a) Requisitions for legislative branch purchases shall be signed by the cochairpersons of the joint committee on legislative organization or their designees for the legislature, by an individual designated by either house of the legislature for the house, or by the head of any legislative service agency, or the designee of that individual, for the legislative service agency. Requisitions for judicial branch purchases shall be signed by the director of state courts or by an individual designated by the director for the courts, or by the head of any judicial branch agency, or the designee of that individual, for the judicial branch agency.

(b) Contracts for purchases by the senate or assembly shall be signed by an individual designated by the organization committee of the house making the purchase. Contracts for other legislative branch purchases shall be signed by an individual designated by the joint committee on legislative organization. Contracts for purchases by the judicial commission or judicial council shall be signed by an individual designated by the commission or council, respectively. Contracts for other judicial branch purchases shall be signed by an individual designated by the director of state courts.

**(3)** Each legislative and judicial officer who is authorized to make purchases or engage services under this section may prescribe the form of requisitions or contracts for the purchases and engagements. Requisitions and contracts shall be maintained by the officer and shall be subject to inspection and copying under subch. II of ch. 19. No such requisition or contract need be filed with the department.

**(4)** Each legislative and judicial officer shall file all bills and statements for purchases and engagements made by the officer under this section with the secretary, who shall audit and authorize payment of all lawful bills and statements. No bill or statement for any purchase or engagement for the legislature, the courts or any legislative service or judicial branch agency may be paid until the bill or statement is approved by the requisitioning or contracting officer under sub. (2).

**(5)** The department, upon request, shall make recommendations and furnish assistance to the courts, to either house of the legislature or to any legislative service or judicial branch agency regarding purchasing procedure. The department, upon request, shall process requisitions for purchases submitted by the courts, the legislature or any legislative service or judicial branch agency and shall procure materials, supplies, equipment, property and services for the courts, the legislature and legislative service and judicial branch agencies in accordance with the purchasing procedure prescribed for executive branch agencies under this subchapter.

**(6)** All stationery and printing purchased under this section shall be procured from the lowest responsible bidder.

**History:** 1985 a. 29.

**16.75 Buy on low bid, exceptions. (1)** (a) 1. All orders awarded or contracts made by the department for all materials, supplies, equipment, and contractual services to be provided to any agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3t), (6), (7), (8), (9), (10e), and (10m) and ss. 16.705 (1r), 16.73 (4) (a), 16.751, 16.754, 50.05 (7) (f), 153.05 (2m) (a), 165.987, and 287.15 (7), shall be awarded to the lowest responsible bidder, taking into consideration life cycle cost estimates under sub. (1m), when appropriate, the location of the agency, the quantities of the articles to be supplied, their conformity with the specifications, and the purposes for which they are required and the date of delivery.

2. If a vendor is not a Wisconsin producer, distributor, supplier or retailer and the department determines that the state, foreign nation or subdivision thereof in which the vendor is domiciled grants a preference to vendors domiciled in that state, nation or subdivision in making governmental purchases, the department and any agency making purchases under s. 16.74 shall give a preference over that vendor to Wisconsin producers, distributors, suppliers and retailers, if any, when awarding the order or contract. The department may enter into agreements with states, foreign nations and subdivisions thereof for the purpose of implementing this subdivision.

3. Bids may be received only in accordance with such specifications as are adopted by the department as provided in this subsection. Any or all bids may be rejected. Whenever sealed bids are invited, each bid, with the name of the bidder, shall be entered on a record, and each record with the successful bid indicated shall, after the award or letting of the contract, be opened to public inspection. Where a low bid is rejected, a complete written record shall be compiled and filed, giving the reason in full for such action. Any waiver of sealed, advertised bids as provided in sub. (2m) or (6) shall be entered on a record kept by the department and open to public inspection.

(b) 1. Except as provided in subd. 2., when the estimated cost exceeds $25,000, the department shall invite bids to be submitted.

2. Bids are not required if the estimated cost does not exceed $50,000.

3. If subd. 1. or 2. requires bids to be solicited, the department either shall solicit sealed bids to be opened publicly at a specified date and time, or shall solicit bidding by auction to be conducted electronically at a specified date and time. Whenever bids are invited, due notice inviting bids shall be published as a class 2 notice, under ch. 985 or posted on the Internet at a site determined or approved by the department. The bid opening or auction shall occur at least 7 days after the date of the last insertion of the notice or at least 7 days after the date of posting on the Internet. The notice shall specify whether sealed bids are invited or bids will be accepted by auction, and shall give a clear description of the materials, supplies, equipment, or contractual services to be purchased, the amount of any bond, share draft, check, or other draft to be submitted as surety with the bid or prior to the auction, and the date and time that the public opening or the auction will be held.

(c) Except as provided in sub. (7), when the estimated cost is $25,000 or less, the award may be made in accordance with simplified procedures established by the department for such transactions.

(cm) If bids are solicited by auction, the award may be made in accordance with simplified competitive procedures established by the department for such transactions.

**(1m)** The department shall award each order or contract for materials, supplies or equipment on the basis of life cycle cost estimates, whenever such action is appropriate. Each authority other than the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox River Remediation Authority, and the Wisconsin Aerospace Authority shall award each order or contract for materials, supplies or equipment on the basis of life cycle cost estimates, whenever such action is appropriate. The terms, conditions and evaluation criteria to be applied shall be incorporated in the solicitation of bids or proposals. The life cycle cost formula may include, but is not limited to, the applicable costs of energy efficiency, acquisition and conversion, money, transportation, warehousing and distribution, training, operation and maintenance and disposition or resale. The department shall prepare documents containing technical guidance for the development and use of life cycle cost estimates, and shall make the documents available to local governmental units.

**(2)** (a) When the department of administration believes that it is to the best interests of the state to purchase certain patented or proprietary articles, other than printing and stationery, it may purchase said articles without the usual statutory procedure but all equipment shall be purchased from the lowest and best bidder as determined by the bids and a comparison of any detailed specifications submitted with the bids, and after due notice, whenever notice is required under this section. Where the low bid or bids are rejected, a complete written record shall be compiled and filed, giving the reasons in full for such action.

(b) When the department determines that utility services are available only from a sole source as a result of regulation or of a natural monopoly, these services may be obtained without compliance with the usual procedure under this section.

**(2g)** (a) The purchasing authority under s. 16.71 (2) may make purchases for products of and goods for resale by prison industries, other than purchases of printing or stationery, without inviting bids and without accepting the lowest responsible bid.

(b) The purchasing authority shall notify the governor prior to any purchase under par. (a) which exceeds $15,000. The governor has 72 hours, excluding Saturday, Sunday or a legal holiday, in which to veto any such purchase.

(c) No notice is required for purchases by prison industries under this subsection. All other purchasing rules and procedures apply to prison industries purchases.

**(2m)** (a) Except as otherwise required by law, if the secretary or his or her designee determines that the use of competitive sealed bidding is not practicable or not advantageous to this state, the department may solicit competitive sealed proposals. Each request for competitive sealed proposals shall state the relative importance of price and other evaluation factors.

(b) 1. Except as provided in subd. 2., when the estimated cost exceeds $25,000, the department may invite competitive sealed proposals.

2. Competitive sealed proposals are not required if the estimated cost does not exceed $50,000.

3. If competitive sealed proposals are invited, the department shall publish a class 2 notice under ch. 985 or post notice on the Internet at a site determined or approved by the department. The notice shall describe the materials, supplies, equipment, or contractual services to be purchased, the intent to make the procurement by solicitation of proposals rather than by solicitation of bids, any requirement for surety and the date the proposals will be opened, which shall be at least 7 days after the date of the last insertion of the notice or at least 7 days after the date of posting on the Internet.

(c) When the estimated cost is $25,000 or less, the department may award the order or contract in accordance with simplified procedures established by the department for such transactions.

(d) For purposes of clarification, the department may discuss the requirements of the proposed order or contract with any person who submits a proposal and shall permit any offerer to revise his or her proposal to ensure its responsiveness to those requirements.

(e) The department shall determine which proposals are reasonably apt to be awarded the order or contract and shall provide each offerer of such a proposal a fair and equal opportunity to discuss the proposal. The department may negotiate with each offerer in order to obtain terms that are advantageous to this state. Prior to the award of the order or contract, any offerer may revise his or her proposal. The department shall keep a written record of all meetings, conferences, oral presentations, discussions, negotiations and evaluations of proposals under this section.

(f) In opening, discussing and negotiating proposals, the department may not disclose any information that would reveal the terms of a competing proposal.

(g) After receiving each offerer's best and final offer, the department shall determine which proposal is most advantageous and shall award the order or contract to the person who offered it. The department's determination shall be based only on price and the other evaluation factors specified in the request for proposals. The department shall state in writing the reason for the award and shall place the statement in the contract file. This paragraph does not apply to procurements under s. 16.751.

(h) Following the award of the order or contract, the department shall prepare a register of all proposals.

(i) This subsection does not apply to the purchase of printing or stationery.

**(3)** The department may let contracts in excess of funds available. Except in the cases to which s. 18.10 (1) applies, any such contract shall state in substance that its continuance beyond the limits of funds already available is contingent upon appropriation of the necessary funds. Contracts may be for any term deemed to be in the best interests of the state but the terms and provisions for renewal or extension, if any, shall be incorporated in the bid specifications and the contract document.

**(3m)** (a) In this subsection:

1. "Disabled veteran−owned business" means a business certified by the department of administration under s. 16.283 (3).

2. "Disabled veteran−owned financial adviser" means a financial adviser certified by the department of administration under s. 16.283 (3).

3. "Disabled veteran−owned investment firm" means an investment firm certified by the department of administration under s. 16.283 (3).

4. "Minority business" means a business certified by the department of administration under s. 16.287 (2).

(b) 1. The department, any agency to which the department delegates purchasing authority under s. 16.71 (1), and any agency making purchases under s. 16.74 shall attempt to ensure that 5 percent of the total amount expended under this subchapter in each fiscal year is paid to minority businesses.

2. The department, any agency to which the department delegates purchasing authority under s. 16.71 (1), and any agency making purchases under s. 16.74 shall attempt to ensure that at least 1 percent of the total amount expended under this subchapter in each fiscal year is paid to disabled veteran−owned businesses.

3. Except as provided under sub. (7), the department, any agency to which the department delegates purchasing authority under s. 16.71 (1), and any agency making purchases under s. 16.74 may purchase materials, supplies, equipment, and contractual services from any minority business or disabled veteran−owned business, or a business that is both a minority business and a disabled veteran−owned business, submitting a qualified responsible competitive bid that is no more than 5 percent higher than the apparent low bid or competitive proposal that is no more than 5 percent higher than the most advantageous proposal. In administering the preference for minority businesses or disabled

veteran−owned businesses established in this paragraph, the department, the delegated agency, and any agency making purchases under s. 16.74 shall maximize the use of minority businesses or disabled veteran−owned businesses which are incorporated under ch. 180 or which have their principal place of business in this state.

(c) 1. After completing any contract under this subchapter, the contractor shall report to the agency that awarded the contract any amount of the contract that was subcontracted to minority businesses and any amount of the contract that was subcontracted to disabled veteran−owned businesses.

2. Each agency shall report to the department at least semiannually, or more often if required by the department, all of the following for the reporting period specified by the department:

a. The total amount of money it has expended for contracts and orders awarded to minority businesses.

b. The total amount of money and the percentage of the total amount of money it has expended for contracts and orders awarded to disabled veteran−owned businesses.

c. The number of contacts with minority businesses in connection with proposed purchases.

d. The number of contacts with disabled veteran−owned businesses in connection with proposed purchases.

3. The department shall maintain and annually publish data on state purchases from minority businesses and on state purchases from disabled veteran−owned businesses, including amounts expended and the percentage of total expenditures awarded to minority businesses and amounts expended and the percentage of total expenditures awarded to disabled veteran−owned businesses.

4. The department shall annually prepare and submit a report to the governor and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), on the total amount of money paid to and the amount of indebtedness or other obligations underwritten by minority businesses, minority financial advisers, minority investment firms, disabled veteran−owned businesses, disabled veteran−owned financial advisers, and disabled veteran−owned investment firms under the requirements of this subsection and ss. 16.855 (10m), 16.87 (2), 25.185, 84.075 and 565.25 (2) (a) 3. and on this state's progress toward achieving compliance with par. (b) and ss. 16.855 (10m) (am) and (10n), 16.87 (2), 25.185, and 84.075 (1m). The report shall also include the percentage of the total amount of money paid to and the percentage of the total amount of indebtedness or other obligations underwritten by disabled veteran−owned businesses, disabled veteran−owned financial advisers, and disabled veteran−owned investment firms. In calculating the percentages to be reported under this subsection, the department shall exclude any purchase or contract for which a preference would violate any federal law or regulation or any contract between an agency and a federal agency or any contract that would result in a reduction in the amount of federal aids received by this state.

5. a. In determining whether a purchase, contract, or subcontract complies with the goal established under par. (b) 1. or 2. or s. 16.855 (10m) (am) 1. or 2., 16.87 (2) (b) or (c), or 25.185 (2) (a) or (b), the department shall include only amounts paid to businesses, financial advisers, and investment firms certified by the department of administration under s. 16.283 or 16.287 (2), whichever is appropriate.

b. In determining whether a purchase, contract, or subcontract is made with a disabled veteran−owned business, the department shall include only amounts paid to disabled veteran−owned businesses certified by the department of administration under s. 16.283 (3).

**(3t)** (a) In this subsection, "form" has the meaning given under s. 16.97 (5p).

(b) All commodities required to be furnished by the department which are produced at the institutions of the state shall be purchased from the institutions if the commodities conform to the specifications prepared by the department.

(c) The department of corrections shall periodically provide to the department of administration a current list of all materials, supplies, equipment or contractual services, excluding commodities, that are supplied by prison industries, as created under s. 303.01. The department of administration shall distribute the list to all designated purchasing agents under s. 16.71 (1). Except as otherwise provided in sub. (6) (am), prior to seeking bids or competitive sealed proposals with respect to the purchase of any materials, supplies, equipment or contractual services enumerated in the list, the department of administration or any other designated purchasing agent under s. 16.71 (1) shall offer prison industries the opportunity to supply the materials, supplies, equipment or contractual services if the department of corrections is able to provide them at a price that is comparable to one which may be obtained through competitive bidding or competitive sealed proposals and is able to conform to the specifications. If the department of administration or other purchasing agent is unable to determine whether the price of prison industries is comparable to one obtained through competitive bidding or competitive sealed proposals, it may solicit bids or competitive proposals before awarding the order or contract. This paragraph does not apply to the printing of the following forms:

2. Forms the use of which is required by federal law.

3. Forms used by teachers to evaluate a student's academic performance.

4. Forms used by hospitals and health care providers to bill or collect from patients and 3rd parties.

5. Forms used by medical personnel in the treatment of patients.

7. Forms that are not public contact forms.

**(4)** (a) The department shall encourage the participation of small businesses and veteran−owned businesses in the statewide purchasing program by ensuring that there are no undue impediments to such participation and by actively encouraging small businesses and veteran−owned businesses to play an active role in the solicitation of purchasing business by agencies. To that end the department shall:

1. Maintain comprehensive lists of small businesses and of veteran−owned businesses located in this state which have indicated a willingness to provide materials, supplies, equipment or contractual services to the state.

2. Develop ways of simplifying specifications and terms so that they will not impose unnecessary administrative burdens on small businesses and veteran−owned businesses located in this state which submit bids or proposals to the state.

3. Assist small businesses and veteran−owned businesses located in this state in complying with the state's competitive bidding and competitive proposal procedures.

4. Notify businesses on the lists maintained under subd. 1. of agency purchasing requests for which the businesses may wish to submit a bid or proposal.

5. By October 1 of each year, submit a report to the council on small business, veteran−owned business and minority business opportunities which evaluates the performance of small businesses located in this state in submitting bids or proposals to the state and makes recommendations for increased involvement of such businesses in submitting competitive bids and proposals under this section.

(b) The department shall seek the cooperation and assistance of the department of safety and professional services in the performance of its duties under par. (a).

(c) In this section and s. 16.755, "small business" means a business which has had less than $1.5 million in gross annual sales in the most recent calendar or fiscal year.

(d) In this subsection and s. 16.755, "veteran−owned business" means a small business, as defined in par. (c), that is certified by

the department of veterans affairs as being at least 51 percent owned by one or more veterans, as defined in s. 45.01 (12).

**(5)** The department may require of bidders, persons making proposals under sub. (2m) or contractors such sureties as, in its judgment, are deemed advisable and may decide as to their responsibility and competency. The department may require a contractor to provide a bond furnished by a surety company authorized to do business in this state, for the proper performance of each contract.

**(6)** (a) Except with respect to purchases of printing and stationery, subs. (1) to (5) do not apply to the purchase of supplies, materials, equipment or contractual services from the federal government.

(am) Subsections (1) and (3t) do not apply to procurements by the department relating to information technology or telecommunications. Annually not later than October 1, the department shall report to the governor, in the form specified by the governor, concerning all procurements relating to information technology or telecommunications by the department during the preceding fiscal year that were not made in accordance with the requirements of subs. (1) and (3t).

(b) If the secretary determines that it is in the best interest of this state to do so, he or she may waive the requirements of subs. (1) to (5) and may purchase supplies, materials, equipment or contractual services, other than printing and stationery, from another state, from any county, city, village, town or other governmental body in this state or from a regional or national consortium composed of nonprofit institutions that support governmental or educational services, or through a contract established by one of those entities with one or more 3rd parties.

(bm) If the secretary determines that it is in the best interest of this state to do so, he or she may waive any requirement under subs. (1) to (5) and ss. 16.705 (1) and (2) to (8) and 16.72 (2) (e) and (f) and (5) with respect to any contract entered into by the department of children and families under s. 49.143, if the department of children and families presents the secretary with a process for the procurement of contracts under s. 49.143 and the secretary approves the process.

(c) If the secretary determines that it is in the best interest of this state to do so, he or she may, with the approval of the governor, waive the requirements of subs. (1) to (5) and may purchase supplies, material, equipment, or contractual services, other than printing and stationery, from a private source other than a source specified in par. (b). Except as provided in sub. (2g) (c), if the cost of the purchase is expected to exceed $25,000, the department shall first publish a class 2 notice under ch. 985 or post a notice on the Internet at the site determined or approved by the department under sub. (1) (b) describing the materials, supplies, equipment, or contractual services to be purchased, stating the intent to make the purchase from a private source without soliciting bids or competitive sealed proposals and stating the date on which the contract or purchase order will be awarded. The date of the award shall be at least 7 days after the date of the last insertion or the date of posting on the Internet.

(d) If the governor determines that it is in the best interest of this state to do so, he or she may issue a general waiver of the requirements of subs. (1) to (5) permitting the purchase of specified materials, supplies, equipment or contractual services, except printing and stationery, from a private source. A general waiver may be issued for any period up to one year. The governor may impose any necessary or appropriate condition or restriction on the waiver.

(e) The governor or his or her designee may waive any requirement of this subchapter, except s. 16.705 (1r), if the governor or his or her designee finds that there exists an emergency which threatens the public health, safety or welfare and the waiver is necessary to meet the emergency. The governor or his or her designee shall require the award of each contract under this paragraph to be made with such competition as is practicable under the circumstances. The governor or his or her designee shall file with the department a statement of facts constituting the emergency for each waiver issued under this paragraph, and a statement of the basis for selection of each contractor under the emergency procedure. This paragraph does not apply to the requirement specified in sub. (7).

(f) The department shall keep a record of each individual or general waiver under pars. (b) to (e). The record shall be open to public inspection.

**(7)** Stationery and printing shall be purchased from the lowest responsible bidder without regard to the amount of the purchase, except when the department of administration exercises the discretion vested in it by s. 16.82 (4).

**(8)** (am) The department, any other designated purchasing agent under s. 16.71 (1), any agency making purchases under s. 16.74, and each authority other than the University of Wisconsin Hospitals and Clinics Authority and the Lower Fox River Remediation Authority shall, to the extent practicable, make purchasing selections using specifications developed under s. 16.72 (2) (e) to maximize the purchase of materials utilizing recycled materials and recovered materials.

(bm) Each agency and authority other than the University of Wisconsin Hospitals and Clinics Authority and the Lower Fox River Remediation Authority shall ensure that the average recycled or recovered content of all paper purchased by the agency or authority measured as a proportion, by weight, of the fiber content of paper products purchased in a fiscal year, is not less than 40 percent of all purchased paper.

**(9)** The department, any other designated purchasing agent under s. 16.71 (1), any agency making purchases under s. 16.74, and any authority other than the University of Wisconsin Hospitals and Clinics Authority and the Lower Fox River Remediation Authority shall, to the extent practicable, make purchasing selections using specifications prepared under s. 16.72 (2) (f).

**(10)** An agency that has building, fleet or energy management responsibilities shall, to the extent cost−effective and technically feasible, rely upon energy systems that utilize fuels produced in this state. In reviewing bids for the purchase of fuels or energy systems or equipment, the agency shall purchase fuel or energy systems or equipment produced in this state if the cost of the lowest responsible bid for such fuel or energy systems or equipment is no greater than the lowest responsible bid for fuel or energy systems or equipment produced outside of this state.

**(10e)** (a) In this subsection, "energy consuming equipment" means any equipment that is designed for heating, ventilation, air conditioning, water heating or cooling, lighting, refrigeration, or any other function, and that consumes energy.

(b) If s. 16.855 (10s) (a) provides an applicable standard for the type of energy consuming equipment being purchased and the purchase will cost more than $5,000 per unit the department, any other designated purchasing agent under s. 16.71 (1), any agency making purchases under s. 16.74, and any authority may not purchase that type of energy consuming equipment unless the specifications for the equipment meet the applicable standards. If there is an applicable standard under s. 16.855 (10s) (a), but the energy consuming equipment meeting that standard is not reasonably available, the department, purchasing agent, agency, or authority shall ensure, for purchases over $5,000 per unit, that the energy consuming equipment that is purchased maximizes energy efficiency to the extent technically and economically feasible. The department, purchasing agent, agency, or authority shall not determine that energy consuming equipment that meets the applicable standard under s. 16.855 (10s) (a) either is not reasonably available on the basis of cost alone or is not cost−effective unless the difference in the cost of the purchase and installation of the equipment that meets the standard and the equipment that would otherwise be installed is greater than the difference in the cost of operating the equipment that meets the standard and the equipment that

would otherwise be installed over the anticipated life of the equipment.

**(10m)** The department, any other designated purchasing agent under s. 16.71 (1), any agency making purchases under s. 16.74, and any authority shall not enter into any contract or order for the purchase of materials, supplies, equipment, or contractual services with a person if the name of the person, or the name of an affiliate of that person, is certified to the department by the secretary of revenue under s. 77.66.

**(11)** (a) In this subsection, "consumer price index" means the average of the consumer price index over each 12−month period, all items, U.S. city average, as determined by the bureau of labor statistics of the U.S. department of labor.

(b) The department may, by rule, biennially adjust the dollar amounts specified in subs. (1) (b) and (c), (2m) (b) and (c) and (6) (c) by an amount not exceeding the amount determined in accordance with this subsection. To determine the maximum adjustment, the department shall calculate the percentage difference between the consumer price index for the 12−month period ending on December 31 of the most recent odd−numbered year and the consumer price index for the base period, calendar year 1995. The department may adjust the amounts specified under subs. (1) (b) and (c), (2m) (b) and (c) and (6) (c) by an amount not exceeding that amount biennially, rounded to the nearest multiple of $1,000. If after such rounding the amounts are different than the amounts currently prescribed, the department shall by rule prescribe revised amounts, which amounts shall be in effect until a subsequent rule is promulgated under this subsection. Notwithstanding s. 227.24 (3), determinations under this subsection may be promulgated as an emergency rule under s. 227.24 without a finding of emergency.

**(12)** (a) In this subsection:

1. "Agency" means the department of administration, the department of corrections, the department of health services, the department of public instruction, the department of veterans affairs, and the Board of Regents of the University of Wisconsin System.

2. "Agency facility" means any state−owned or leased facility that is occupied, operated, or used by an agency.

3. "Renewable percentage" means the percentage of total annual electric energy that is derived from renewable resources.

4. "Renewable resource" has the meaning given in s. 196.378 (1) (h) 1. or 2. and includes a resource, as defined in s. 196.378 (1) (j), that derives electricity from hydroelectric power.

5. "Total annual electric energy" means the total annual amount of electric energy generated or purchased by the state for power, heating, or cooling purposes for all agency facilities.

(b) The department shall establish goals for each agency that are designed to accomplish the following goals:

1. That the renewable percentage for total annual electric energy by December 31, 2007, is at least 10 percent.

2. That the renewable percentage for total annual electric energy by December 31, 2011, is at least 20 percent.

(c) In determining whether the goals under par. (b) are accomplished, the department shall do all the following:

1. Calculate total annual electric energy on the basis of an average of the total annual electric energy during the 3 years prior to the specified dates.

2. For any individual agency facility, consider only electric energy that is purchased from the electric provider that serves the agency facility under an arrangement with a term of 10 years or more and electric energy derived from renewable resources owned by the state and produced for use in the agency facility.

(d) Notwithstanding par. (b), an agency is not required to generate or purchase electric energy derived from renewable resources if the generation or purchase is not technically feasible or cost−effective.

(e) No later than March 1 of each year, the department shall submit a report to the governor and chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), concerning the degree of attainment and, if applicable, reasons for nonattainment by the state during the preceding year in meeting the goals established by the department under par. (b).

**History:** 1975 c. 224; 1977 c. 418, 419; 1979 c. 34, 221, 314, 340, 355; 1979 c. 361 s. 112; 1981 c. 121 s. 20; 1983 a. 27 ss. 91, 93 to 99; 1983 a. 333 ss. 3g, 3r to 4b, 6; 1983 a. 368, 390; 1985 a. 29 ss. 122m to 124, 3200 (1); 1985 a. 180; 1987 a. 27, 119, 142, 147, 186, 399, 403; 1989 a. 31, 335, 345, 359; 1991 a. 39, 170; 1993 a. 16, 414; 1995 a. 27 ss. 368 to 382, 9116 (5); 1995 a. 225, 227, 244, 289, 432; 1997 a. 3; 1999 a. 9, 44, 197; 2001 a. 16, 38; 2003 a. 33; 2005 a. 22, 25, 74, 141, 335; 2007 a. 20 ss. 102 to 103h, 9121 (6) (a); 2007 a. 97; 2009 a. 136, 180, 299; 2011 a. 32; 2011 a. 260 ss. 80, 81; 2013 a. 20, 166, 192; 2015 a. 55, 195.

**Cross−reference:** See also ch. Adm 10, Wis. adm. code.

**NOTE: 1991 Wis. Act 170, which amends this section, contains an extensive prefatory note concerning veteran−owned businesses.**

The proper standard for determining whether the department of administration has abused its discretion in setting a bidding requirement is whether its decision was arbitrary or unreasonable. The department is not required to hold a hearing or follow any specified procedure in adopting bid requirements. Glacier State Distribution Services, Inc. v. DOT, 221 Wis. 2d 359, 585 N.W.2d 652 (Ct. App. 1998), 97−2472.

Procuring statutes and regulations, such as Adm Ch. 10, Wis. Adm. Code, are designed to prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as to ensure that the public receives the best work at the most reasonable price practicable. As such, these regulations are intended for the benefit and protection of the public and not of the individual bidder. PRN Associates LLC v. DOA, 2009 WI 53, 317 Wis. 2d 656, 766 N.W.2d 559, 07−0476.

The preference for Wisconsin businesses under ss. 16.75 (1) (a) and 16.855 (1) operates only in case of a tie bid. 74 Atty. Gen. 47.

**16.751 Information technology purchases by investment board.** The requirements of ss. 16.72 (2) (b) and 16.75 (1) (a) 1. and (2m) (g) do not apply to procurements authorized to be made by the investment board under s. 16.78 (1) for information technology purposes.

**History:** 1999 a. 9; 2001 a. 16; 2011 a. 32.

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

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

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

(d) "Severely handicapped individual" means an individual who has a physical, mental or emotional disability which is a substantial handicap to employment and prevents the individual from engaging in normal competitive employment.

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

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

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

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

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

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

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

1. A summary of materials, supplies, equipment and contractual services purchased by agencies from work centers.

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

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

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

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

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

(i) Prescribe a surcharge to be paid by each agency, which shall be payable to the department within a time and in accordance with a procedure specified by the board.

**(7)** QUALIFICATION OF WORK CENTERS. To qualify for participation under the program established under this section, a work center shall submit to the board a copy of its license under s. 104.07 together with the following documents, transmitted by a letter signed by an officer of the work center:

(a) In the case of a charitable organization or nonprofit institution:

1. A legible copy of the articles of incorporation of the organization showing the date of filing with the department of financial institutions.

2. A copy of the bylaws of the organization certified by an officer.

3. A copy of a letter from the federal internal revenue service indicating that the organization qualifies as a tax−exempt organization.

(b) In the case of a unit of county government, a copy of the ordinance or resolution of the county board of supervisors authorizing or directing the establishment of the work center.

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

(a) Furnish materials, supplies, equipment and services in strict accordance with orders issued by agencies.

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

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

(d) Annually submit to the board a certification that it is qualified to participate in the program established under this section.

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

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

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

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

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

**(11)** VIOLATIONS. Any alleged violation of this section by a work center shall be investigated by the board. The board shall determine whether a violation has occurred. If the board determines that a violation has occurred, the board may terminate assignments to the work center or suspend assignments for such period as the board determines.

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

(b) Purchase orders shall contain the following:

1. The name, material, supply or equipment number assigned by the board, most recent specification, quantity, unit price, and place and time of delivery.

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

(c) Agencies shall issue purchase orders with sufficient time for the appropriate work center to produce the materials, supplies or equipment or provide the services required.

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

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

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

(i) Paragraph (a) does not apply to procurements by the department relating to information technology or telecommunications.

(j) Paragraph (a) does not apply to services purchased under a contract under s. 153.05 (2m) (a).

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

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

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

(b) Issue an authorization to an ordering agency to procure materials, supplies, equipment or services from commercial sources when the quantity involved is not sufficient for the economical production or provision by the work center to which the order is assigned.

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

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

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

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

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

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

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

(b) Services provided by work centers under specifications issued by an agency shall be performed by work centers in strict accordance with the specifications. If no specifications exist, the services shall be performed by work centers in accordance with good commercial practices.

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

**(18)** SPECIFICATION CHANGES. (a) The board may change specifications contained in the list maintained under sub. (2) (g). Each list shall contain a basic specification and the date of the latest revision.

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

**History:** 1989 a. 345; 1991 a. 32, 39; 1993 a. 16, 17; 1995 a. 27 ss. 383b, 384, 9116 (5); 2001 a. 16; 2003 a. 33; 2011 a. 32.

**NOTE: See 1989 Wis. Act 345, which created this section, for a statement of legislative purpose.**

**16.753 Information relating to pending contracts and orders. (1)** In this section, "major expenditure" means an expenditure of $10,000 or more or, if a contract or order is for continuing purchases, an expenditure of $10,000 or more in the current fiscal biennium.

**(2)** Except as otherwise expressly provided, each agency shall provide to the ethics commission for posting on the Internet a list identifying each solicitation for bids or competitive sealed proposals and each proposed order or contract of the agency for which bids or competitive sealed proposals will not be solicited that involves a major expenditure, together with all information required under sub. (4).

**(3)** An agency shall post the information under sub. (2) within 24 hours of the time of initial solicitation or commencement of negotiations, or the time that the information becomes available, if the information is not available at the time of solicitation or commencement of negotiations, and shall maintain the posting until at least 90 days following the time of award of the contract or placement of the order or 90 days following the date of any change order, whichever is later. The agency shall also post any change order to a listed order or contract. If an original order or contract that did not involve a major expenditure, together with a change order, aggregates to a contract or order that involves a major expenditure, the agency shall post the information under sub. (2) with respect to that order or contract.

**(4)** For each solicitation, contract, or order, the posting shall include:

(a) A brief description of the purpose of the solicitation, contract, or order.

(b) The name of the agency to which the materials, supplies, equipment, or contractual services are to be provided.

(c) A contact person within the agency under par. (b) from whom further information may be obtained.

(d) The date of the solicitation and, if the contract has been entered into or the order has been placed, the date of that action.

(e) A brief description and the date of any change order.

(f) The estimated expenditures to be made under the contract or order, including any changes thereto, or if the contract or order is for continuing purchases the estimated expenditures to be made under the contract or order in the current fiscal biennium.

**History:** 2005 a. 410; 2007 a. 1; 2011 a. 257; 2015 a. 118.

**16.754 Preference for American−made materials. (1)** DEFINITIONS. As used in this section:

(a) "Manufactured" means mined, produced, manufactured, fabricated or assembled.

(b) "Manufactured in the United States" means that materials are manufactured in whole or in substantial part within the United States or that the majority of the component parts thereof were manufactured in whole or in substantial part in the United States.

(c) "Materials" means any goods, supplies, equipment or any other tangible products or materials.

(d) "Purchase" means acquire by purchase or lease.

(e) "State" means the state of Wisconsin or any agency thereof, a contractor acting pursuant to a contract with the state, and any person acting on behalf of the state or any agent thereof.

**(2)** PURCHASE PREFERENCE. Notwithstanding s. 16.75 (1) (a) 2., (2), (2m) and (6), when all other factors are substantially equal the state shall purchase materials which are manufactured to the greatest extent in the United States.

**(3)** EXEMPTIONS. Subsection (2) does not apply if the materials are purchased for the purpose of commercial resale or for the purpose of use in the production of goods for commercial sale. Subsection (2) does not apply to the purchase of stationery and printing materials. Subsection (2) does not apply if the department determines, under s. 16.75 (1) (a) 2., that the foreign nation or subdivision thereof in which the vendor is domiciled does not give preference to vendors domiciled in that nation or subdivision in making governmental purchases. Subsection (2) does not apply if the department or other person having contracting authority in respect to the purchase determines that:

(a) The materials are not manufactured in the United States in sufficient or reasonably available quantities; or

(b) The quality of the materials is substantially less than the quality of similar available materials manufactured outside of the United States.

**History:** 1979 c. 314; 1983 a. 27 s. 2202 (1); 1987 a. 27.

**16.755 Council on small business, veteran−owned business and minority business opportunities.** The council on small business, veteran−owned business and minority business opportunities shall:

**(1)** Review the extent of small business, veteran−owned business and minority business participation in purchasing by this state and its agencies.

**(2)** Advise the department's purchasing agent with respect to methods of increasing such participation.

**(3)** Advise the department's purchasing agent with respect to methods of simplifying or easing compliance with the forms and procedures used or to be used for obtaining contracts with the state for providing materials, supplies, equipment and contractual services.

**(4)** Advise the department concerning methods of improved compliance with any aspect of its duties under s. 16.75 (4) (a).

**(5)** Annually, submit a report containing any recommendations regarding the matters described in subs. (1) to (4) to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2).

**History:** 1977 c. 418 s. 929 (55); 1977 c. 419; 1983 a. 27, 524; 1985 a. 29 s. 3200 (1); 1987 a. 186; 1991 a. 170.

**16.76 Form of contracts; continuing contracts. (1)** All contracts for materials, supplies, equipment or contractual services to be provided to any agency shall run to the state of Wisconsin. Such contracts shall be signed by the secretary or an individual authorized by the secretary, except that contracts entered into directly by the legislature, the courts or a legislative service or judicial branch agency shall be signed by an individual authorized under s. 16.74 (2) (b).

**(3)** (a) Prices established in a continuing contract to provide materials, supplies, equipment or contractual services over a period of time may be lowered due to general market conditions, but prices shall not be subject to increase for 90 calendar days from the date of award. The contractor shall submit any proposed price increase under a continuing contract to the department at least 30 calendar days before the proposed effective date of the price increase. Any price increase shall be limited to fully documented cost increases to the contractor which the contractor demonstrates to be industrywide. The conditions under which price increases may be granted shall be expressed in bidding documents and contracts.

(b) The department may accept, negotiate or reject any proposed price increase. Upon rejection, the contractor may exercise any termination clause which has been incorporated into the contract.

**(4)** (a) In this subsection, "master lease" means an agreement entered into by the department on behalf of one or more agencies to obtain property or services under which the department makes or agrees to make periodic payments.

(ag) The department may pay or agree to pay under a master lease a sum substantially equivalent to or in excess of the aggregate value of property or services obtained and it may be agreed that the department or one or more agencies will become, or for no other or nominal consideration has the option to become, the owner of property obtained or to be obtained under a master lease upon full compliance with its terms.

(b) Except as provided in par. (h), the department may enter into a master lease whenever the department determines that it is advantageous to the state to do so. If the master lease provides for payments to be made by the state from moneys that have not been appropriated at the time that the master lease is entered into, the master lease shall contain the statement required under s. 16.75 (3).

(c) Payments under a master lease may include interest payable at a fixed or variable rate as the master lease may provide. The department may enter into agreements and ancillary arrangements which the department determines to be necessary to facilitate the use of a master lease.

(d) The department may delegate to other persons the authority and responsibility to take actions necessary and appropriate to implement agreements and ancillary arrangements under par. (c).

(e) The department may grant a perfected security interest in property obtained or to be obtained under a master lease. The department shall record and preserve evidence of the security interest in its offices at all times during which the master lease is in effect.

(f) The department may appoint one or more fiscal agents for each master lease. Each fiscal agent shall be an incorporated bank or trust company authorized by the laws of the United States or of the state in which it is located to do business as a banking or trust company. The department shall periodically require competitive proposals, under procedures established by the department, for fiscal agent services under this paragraph. There may be deposited with a fiscal agent, in a special account for such purpose only, a sum estimated to be sufficient to enable the fiscal agent to make all payments which will come due under the master lease not more than 15 days after the date of deposit. The department may make such other provisions respecting fiscal agents as it considers necessary or useful and may enter into a contract with any fiscal agent containing such terms, including compensation, and conditions in regard to the fiscal agent as it considers necessary or useful.

(g) Sections 16.705 and 16.75 do not apply to agreements or ancillary agreements under par. (c) or contracts for fiscal agent services under par. (f).

(h) A master lease may not be used to obtain a facility for use or occupancy by the state or an agency or instrumentality of the state or to obtain an internal improvement.

(j) If a master lease is used to finance payments to be made under an energy conservation construction project as provided in s. 16.858 (2), payments under the lease may not be conditioned upon any payment required to be made by the contractor pursuant to an energy conservation audit.

**History:** 1973 c. 333; 1977 c. 196 s. 130 (3); 1979 c. 34; 1983 a. 27; 1985 a. 29; 1987 a. 119, 142; 1989 a. 31; 1991 a. 39; 1993 a. 496; 1995 a. 27; 1999 a. 9.

**16.765 Nondiscriminatory contracts. (1)** Contracting agencies, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, and the Bradley Center Sports and Entertainment Corporation shall include in all contracts executed by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation as defined in s. 111.32 (13m), or national origin and, except with respect to sexual orientation, obligating the contractor to take affirmative action to ensure equal employment opportunities.

**(2)** Contracting agencies, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, and the Bradley Center Sports and Entertainment Corporation shall include the following provision in every contract executed by them: "In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities. The contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause".

**(3)** Subsections (1) and (2) shall not apply to contracts to meet special requirements or emergencies, if approved by the department.

**(4)** Contracting agencies, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System

Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, and the Bradley Center Sports and Entertainment Corporation shall take appropriate action to revise the standard government contract forms under this section.

**(5)** The head of each contracting agency and the boards of directors of the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, and the Bradley Center Sports and Entertainment Corporation shall be primarily responsible for obtaining compliance by any contractor with the nondiscrimination and affirmative action provisions prescribed by this section, according to procedures recommended by the department. The department shall make recommendations to the contracting agencies and the boards of directors of the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, and the Bradley Center Sports and Entertainment Corporation for improving and making more effective the nondiscrimination and affirmative action provisions of contracts. The department shall promulgate such rules as may be necessary for the performance of its functions under this section.

**(6)** The department may receive complaints of alleged violations of the nondiscrimination provisions of such contracts. The department shall investigate and determine whether a violation of this section has occurred. The department may delegate this authority to the contracting agency, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, or the Bradley Center Sports and Entertainment Corporation for processing in accordance with the department's procedures.

**(7)** When a violation of this section has been determined by the department, the contracting agency, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, or the Bradley Center Sports and Entertainment Corporation, the contracting agency, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, or the Bradley Center Sports and Entertainment Corporation shall:

(a) Immediately inform the violating party of the violation.

(b) Direct the violating party to take action necessary to halt the violation.

(c) Direct the violating party to take action necessary to correct, if possible, any injustice to any person adversely affected by the violation.

(d) Direct the violating party to take immediate steps to prevent further violations of this section and to report its corrective action to the contracting agency, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, or the Bradley Center Sports and Entertainment Corporation.

**(8)** If further violations of this section are committed during the term of the contract, the contracting agency, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, or the Bradley Center Sports and Entertainment Corporation may permit the violating party to complete the contract, after complying with this section, but thereafter the contracting agency, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, or the Bradley Center Sports and Entertainment Corporation shall request the department to place the name of the party on the ineligible list for state contracts, or the contracting agency, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, or the Bradley Center Sports and Entertainment Corporation may terminate the contract without liability for the uncompleted portion or any materials or services purchased or paid for by the contracting party for use in completing the contract.

**(9)** The names of parties who have had contracts terminated under this section shall be placed on an ineligible list for state contracts, maintained by the department. No state contract may be approved and let to any party on such list of ineligible contractors. The department may remove the name of any party from the ineligible list of contractors if the department determines that the contractor's employment practices comply with this section and provide adequate safeguards for its observance.

**(10)** The department shall refer any individual complaints of discrimination which are subject to investigation under subch. II of ch. 111 to the department of workforce development.

**(11)** A violation by a prime contractor shall not impute to a subcontractor nor shall a violation by a subcontractor impute to a contractor.

**History:** 1975 c. 94, 189, 275, 422; 1977 c. 29, 418; 1981 c. 112; 1981 c. 334 s. 25 (2); 1981 c. 391 s. 210; 1985 a. 26; 1985 a. 29 s. 3200 (1); 1995 a. 27 ss. 386 to 389, 9130 (4); 1995 a. 225; 1997 a. 3; 2001 a. 16; 2005 a. 74, 335; 2007 a. 20, 97; 2009 a. 28; 2011 a. 7, 10; 2013 a. 20; 2013 a. 173 s. 33.

**Cross−reference:** See also ch. Adm 50, Wis. adm. code.

Cities, counties, and other local governmental entities are not "contracting agencies" under sub. (1). 68 Atty. Gen. 306.

**16.767 Setoffs.** All amounts owed by this state under this subchapter are subject to being set off under s. 73.12.

**History:** 1985 a. 29.

**16.77 Audit of bills; illegal contracts; actions to recover. (1)** No bill or statement for work or labor performed under purchase orders or contracts issued by the secretary or the secretary's designated agents, and no bill or statement for supplies, materials, equipment or contractual services purchased for and delivered to any agency may be paid until the bill or statement is approved through a preaudit or postaudit process determined by the secretary. This subsection does not apply to purchases made directly by the courts, the legislature or a legislative service or judicial branch agency under s. 16.74.

**(2)** Whenever any officer or any subordinate of an officer contracts for the purchase of supplies, material, equipment or contractual services contrary to ss. 16.705 to 16.82 or the rules promulgated pursuant thereto, the contract is void, and any such officer or subordinate is liable for the cost thereof, and if such supply, material, equipment or contractual services so unlawfully purchased have been paid for out of public moneys, the amount thereof may be recovered in the name of the state in an action filed by the attorney general against the officer or subordinate and his or her bonders. Such cause of action is deemed to have arisen in Dane County, and summons shall be served therein as in civil actions.

**History:** 1979 c. 221; 1981 c. 20 s. 2202 (1) (c); 1985 a. 29; 1985 a. 332 s. 251 (5); 1987 a. 119; 1991 a. 39.

**16.78 Purchases from department relating to information technology or telecommunications. (1)** Every agency other than the board of regents of the University of Wisconsin System, the University of Wisconsin−Madison, or an agency making purchases under s. 16.74 shall make all purchases of materials, supplies, equipment, and contractual services relating to information technology or telecommunications from the department, unless the department requires the agency to pur-

chase the materials, supplies, equipment, or contractual services pursuant to a master contract established under s. 16.972 (2) (h), or grants written authorization to the agency to procure the materials, supplies, equipment, or contractual services under s. 16.75 (1) or (2m), to purchase the materials, supplies, equipment, or contractual services from another agency or to provide the materials, supplies, equipment, or contractual services to itself. The board of regents of the University of Wisconsin System and the University of Wisconsin−Madison may make purchases of materials, supplies, equipment, and contractual services relating to information technology or telecommunications from the department.

**(2)** Sections 16.705 to 16.767 and 16.77 (1) do not apply to the purchase of materials, supplies, equipment, or contractual services by any agency from the department under sub. (1).

**History:** 1991 a. 39; 2001 a. 16, 104; 2003 a. 33; 2011 a. 32; 2013 a. 20 ss. 2365m, 9448.

**16.79 Duties of department of administration. (1)** The department shall distribute so many copies of the Wisconsin reports as may be required by the state law librarian to make the exchanges provided for by law with other states and territories.

**(2)** The department shall distribute in pamphlet form copies of the constitution and such laws as may be required to meet the public demand, including the election laws. The department shall distribute election manuals, forms, and supplies specified by the elections commission. The laws, manuals, forms, and supplies shall be sold by the department at cost, including distribution cost as determined under s. 35.80. The elections commission shall inform the department in writing as to which election manuals, forms, and supplies shall be offered for distribution under this subsection.

**History:** 1971 c. 82; 1973 c. 334 s. 57; 1979 c. 34; 1983 a. 484; 1985 a. 29; 1989 a. 192; 2007 a. 1; 2015 a. 118.

**16.82 Powers of department of administration.** In addition to other powers vested in the department of administration, it and its duly authorized representatives:

**(1)** Shall have access at all reasonable times to all state offices.

**(2)** May examine all books, records, papers and documents in any such office or institution as pertain directly or indirectly to the purchase of, control of, or distribution of supplies, materials and equipment.

**(3)** May require any officer to furnish any and all reasonable data, information or statement relating to the work of the officer's department.

**(4)** (a) May produce or contract to have produced, printing of classes 1, 3 and 4, and excerpts from the statutes under class 2, and all materials offered by state agencies for production.

(b) May determine the form, style, quantity and method of reproduction, when not specifically prescribed by law, of all materials offered by state agencies for production. Any state agency which objects to the determination made under this paragraph may appeal the decision of the department to the governor.

(c) Agencies performing work under this section shall make reports as are required to the department which shall compile and prepare such summary reports as the joint committee on finance requests.

(d) May, during a period when a contract for any class or subclass of public printing has expired and a new contract for the following biennium has not been entered into under ch. 35, obtain public printing from private printers at prevailing commercial rates, or may produce public printing.

(e) In deciding whether to use the discretion under pars. (a) and (d) to produce graphic material, the department shall take into consideration the urgency of the work and the relative cost of production by the department as against the cost of outside work.

(f) The cost of work done under pars. (a) to (e) shall be charged to the agency ordering the work.

(g) This subsection and s. 35.015 shall be liberally construed so as to effectuate the legislature's intent to vest broad discretion in the department to determine what public printing in the classes covered and what materials offered by state agencies for production shall be done by the state itself, and what shall be contracted. Such liberal construction shall extend to the department's determination to use the power conferred, to the determination of what work is to be included in the classes covered, and to the determination of whether a given process is similar to those enumerated.

(h) To further legislative intent, the department shall impose all practical restraint on the capability for production by the state of the classes enumerated consistent with s. 16.001.

**(5)** Shall develop and implement a comprehensive group transportation program for state employees, in cooperation with all agencies, as defined in s. 16.52 (7), and shall promote and encourage participation in the group transportation program. The program may include car pooling and van pooling service. In addition, the department shall promote and encourage alternate means of transportation for state, municipal and federal employees and persons in the private sector including but not limited to mass transit and bicycle commuting. The department may provide contract group transportation of state employees from designated pickup points to work sites and return in the absence of convenient and public scheduled transportation. Any driver of a van that is utilized by the department for a van pool shall have completed a driver safety training course approved by the department. Nonstate employees may be permitted to participate in van pools when necessary in order to provide viable van pool service for state employees. Group transportation shall be provided for a fee which recovers the full cost of administration, maintenance, operation, insurance and depreciation of the group transportation program, plus interest for general purpose revenues utilized for the program, except as provided in s. 16.843 (2) (bm). The department shall calculate interest recoverable under this subsection by applying the average earnings rate of the state investment fund for each quarter to the average general purpose revenues utilized under s. 20.903 (2) (b) from the appropriation under s. 20.505 (1) (im) for group transportation purposes in the same quarter. No less often than annually, the department shall assess the interest payable under this subsection as of the most recently completed quarter and shall deposit the amounts collected into the general fund. No person is deemed to be in the course of employment while utilizing group transportation.

**(6)** May provide any services to a local professional baseball park district created under subch. III of ch. 229, for compensation to be agreed upon between the department and the district, if the district has entered into a lease agreement with the department under sub. (7), except that the department shall not act as a general contractor for any construction work undertaken by the district. No order or contract to provide any such services is subject to s. 16.705, 16.75 (1) to (5) and (8) to (10), 16.752, 16.754 or 16.765.

**(7)** May enter into a lease agreement with a local professional baseball park district created under subch. III of ch. 229 for the lease of land or other property granted to the state and especially dedicated by the grant to use for a professional baseball park. The lease agreement may be for such rental payments and for such term as the secretary determines.

**History:** 1971 c. 125; 1975 c. 39 s. 732 (1); 1977 c. 29; 1979 c. 34, 221; 1981 c. 350; 1983 a. 333; 1985 a. 29; 1989 a. 31; 1991 a. 39, 316; 1995 a. 47, 56; 1999 a. 83.

**16.83 State capitol and executive residence board. (1)** PURPOSE. The purpose of the state capitol and executive residence board is to direct the continuing and consistent maintenance of the property, decorative furniture and furnishings of the capitol and executive residence.

**(2)** POWERS AND DUTIES. No renovation, repairs except repairs of an emergency nature, installation of fixtures, decorative items or furnishings for the grounds and buildings of the capitol or executive residence may be performed by or become the property of the state by purchase wholly or in part from state funds, or by gift, loan or otherwise until approved by the board as to design, structure, composition and appropriateness. The board shall:

(a) Annually thoroughly investigate the state of repair of the capitol and executive residence.

(b) Project the necessary personnel, materials and supplies required annually to maintain the executive residence appropriately both for its public functions and as the residence of the governor, and make specific budget recommendations to the department of administration to accomplish this purpose.

(c) Ensure the architectural and decorative integrity of the buildings, fixtures, decorative items, furnishings and grounds of the capitol and executive residence by setting standards and criteria for subsequent repair, replacement and additions.

(cm) Accept for the state donations or loans of works of art or other decorative items and fixtures consistent with par. (c) to be used at the state capitol.

(d) Accept for the state donations or loans of furnishings, works of art or other decorative items and fixtures consistent with par. (c).

(e) Accept for the state all gifts, grants and bequests to the state capitol restoration fund, and authorize expenditures from the appropriation under s. 20.505 (4) (r) for the purposes of maintenance, restoration, preservation and rehabilitation of the buildings and grounds of the state capitol, or of artifacts, documents and other historical objects or resources located within and around the state capitol, and for the purpose of the acquisition of replacement or reacquisition of original artifacts, documents and other historical objects or resources, including statuary and works of art, consistent with par. (c), for the state capitol.

**(3)** SWIMMING POOL PROHIBITED. The board may not approve the construction or maintenance of a swimming pool on the grounds of or in the executive residence.

**(4)** FOUNDATION. The board may organize or cooperate in the organization of a private foundation to be operated for the purposes specified in sub. (2) (e).

**History:** 1979 c. 34, 221; 1993 a. 477, 491.

**16.835 Offices and rooms in capitol.** The office of the governor shall be located in the capitol. The attorney general, lieutenant governor and supreme court shall each keep a room in the capitol. The circular room on the 2nd floor of the capitol located between the assembly and senate chambers shall be made available for the use of the capitol press corps.

**History:** 1977 c. 3, 447; 1983 a. 27; 1989 a. 31; 1997 a. 237.

**16.838 Historically significant furnishings. (1)** DEFINITIONS. In this section:

(a) "Agency" has the meaning given in s. 16.045 (1) (a).

(b) "Authority" means a body created under subch. II of ch. 114 or ch. 231, 232, 233, 234, or 237.

(c) "Historically significant furnishings" means furniture, fixtures, decorative objects or other items that are or were associated with the current or any prior state capitol and that possess historical significance.

**(2)** TITLE. Title to historically significant furnishings in the possession of any agency or authority, including the senate and assembly, is vested in the department.

**(3)** ACQUISITION. The department may acquire any historically significant furnishing by purchase or gift. The department shall pay for any such furnishing from the appropriation under s. 20.855 (3) (c).

**(4)** TRANSFER OF POSSESSION. The department shall take possession of historically significant furnishings to which the department has title whenever the department is directed to do so by the joint committee on legislative organization. If a ceding agency or authority requires a replacement for a furnishing that is transferred to the department's possession, the department shall pay for a suitable replacement from the appropriation under s. 20.855 (3) (c).

**(5)** RESTORATION. The department shall restore any historically significant furnishing in its possession prior to relocation of the furnishing to the capitol if the joint committee on legislative organization so directs. The department shall pay the cost of such restoration from the appropriation under s. 20.855 (3) (c).

**(6)** LOCATION. The department shall locate historically significant furnishings in its possession at the places in the capitol specified by the joint committee on legislative organization.

**History:** 1999 a. 4; 2001 a. 16; 2005 a. 335; 2011 a. 229.

**16.839 State facilities named.** The aviation facilities operated by the state of Wisconsin at the Dane County Regional Airport in the city of Madison are named the "Fritz E. Wolf Aviation Center."

**History:** 2005 a. 424.

**16.84 Real estate and physical plant management; protection of persons.** The department shall:

**(1)** Have charge of, operate, maintain and keep in repair the state capitol building, the executive residence, any heating, cooling, and power plants serving state properties that are owned by this state except those that are operated by an agency, as defined in s. 16.52 (7), or by a lessee under s. 13.48 (14) or 16.848 (1), the state office buildings and their power plants, the grounds connected therewith, and such other state properties as are designated by law. All costs of such operation and maintenance shall be paid from the appropriations under s. 20.505 (5) (ka) and (kb), except for debt service costs paid under s. 20.866 (1) (u). The department shall transfer moneys from the appropriation under s. 20.505 (5) (ka) to the appropriation account under s. 20.505 (5) (kc) sufficient to make principal and interest payments on state facilities and payments to the United States under s. 13.488 (1) (m).

**(2)** Appoint such number of police officers as is necessary to safeguard all public property placed by law in the department's charge, and provide, by agreement with any other state agency, police and security services at buildings and facilities owned, controlled, or occupied by the other state agency. The governor or the department may, to the extent it is necessary, authorize police officers employed by the department to safeguard state officers, state employees, or other persons. A police officer who is employed by the department and who is performing duties that are within the scope of his or her employment as a police officer has the powers of a peace officer under s. 59.28, except that the officer has the arrest powers of a law enforcement officer under s. 968.07 regardless of whether the violation is punishable by forfeiture or criminal penalty. The officer may exercise the powers of a peace officer and the arrest powers of a law enforcement officer while located anywhere within this state. Nothing in this subsection limits or impairs the duty of the chief and each police officer of the police force of the municipality in which the property is located to arrest and take before the proper court or magistrate persons found in a state of intoxication or engaged in any disturbance of the peace or violating any state law in the municipality in which the property is located, as required by s. 62.09 (13).

**(3)** Contract for protection relating to ch. 565, if so requested.

**(5)** Have responsibility, subject to approval of the governor, for all functions relating to the leasing, acquisition, allocation and utilization of all real property by the state, except where such responsibility is otherwise provided by the statutes. In this connection, the department shall, with the governor's approval, require physical consolidation of office space utilized by any executive branch agency having fewer than 50 authorized full−time equivalent positions with office space utilized by another executive branch agency, whenever feasible. The department shall lease or acquire office space for legislative offices or legislative service agencies at the direction of the joint committee on legislative organization. In this subsection, "executive branch agency" has the meaning given in s. 16.70 (4).

**(6)** Require of the several agencies of state government all information necessary for the planning and forecasting of the space needs of state government on a comprehensive long−range

basis. To this end the department shall cooperate with the building commission in order that the projected program of new construction will conform with the state's long−range building plans.

**(7)** Approve administrative district boundaries of the several state agencies unifying them where possible in order to facilitate the acquisition and maintenance of suitable district headquarters in the several parts of the state.

**(8)** Let concessions for periods not exceeding 2 years in the capitol and state office buildings, under such terms and conditions as will in its judgment be most favorable to the state, and in accordance with s. 47.03 (4), (5), (7) and (11).

**(9)** Prepare a Wisconsin state capitol guide book containing information regarding the state capitol and grounds, to be sold as near cost as practicable.

**(10)** Approve the design, structure, composition, location and arrangements made for the care and maintenance of all public monuments, memorials, or works of art which shall be constructed by or become the property of the state by purchase wholly or in part from state funds, or by gift or otherwise. "Work of art" means any painting, portrait, mural decoration, stained glass, statue, bas−relief, ornament, tablets, fountain or any other article or structure of a permanent character intended for decoration or commemoration. This subsection does not apply to public monuments, memorials or works of art which are or will become property of the University of Wisconsin System or the historical society.

**(12)** Provide for the establishment of procedures for the operation of the department's facility operations and maintenance appropriation under s. 20.505 (5) (ka) so that:

(a) There is a uniform revenue billing and expenditure allocation process for all state buildings whose operation and maintenance costs are financed from this appropriation;

(b) Expenditure projections are made at a uniform time for all buildings in setting revenue billing rates; and

(c) Whenever revenue billing rates need to be adjusted, the changes are made on a uniform basis for all buildings.

**(13)** Establish bicycle storage racks adjacent to the capitol and all state office buildings.

**(14)** Provide interagency mail delivery service for agencies, as defined in s. 16.70 (1e). The department may charge agencies for this service. Any moneys collected shall be credited to the appropriation account under s. 20.505 (1) (kb).

**History:** 1971 c. 183; 1975 c. 41 s. 52; 1977 c. 418; 1979 c. 34, 221; 1981 c. 314; 1983 a. 36 s. 96 (4); 1983 a. 435 s. 7; 1983 a. 524; 1985 a. 135 s. 83 (5); 1987 a. 27; 1989 a. 31; 1991 a. 39, 269; 1995 a. 27, 174; 2001 a. 16; 2003 a. 33, 321; 2013 a. 20.

**Cross−reference:** See also ch. Adm 2, Wis. adm. code.

**16.842 State capitol view preservation. (1)** Except as authorized under this section, no portion of any building or structure located within one mile of the center of the state capitol building may exceed the elevation of 1,032.8 feet above sea level as established by the U.S. coast and geodetic survey.

**(2)** This section does not apply to any building or structure erected prior to April 28, 1990.

**(3)** The city of Madison may grant exceptions to the application of sub. (1) for flagpoles, communications towers, church spires, elevator penthouses, screened air conditioning equipment or chimneys, subject to approval of any plan commission created under s. 62.23 (1).

**History:** 1989 a. 222.

**16.843 Capitol and state office buildings parking regulations. (1)** (a) Except as provided in par. (b), the parking of motor vehicles at the curb on the capitol park side of the 4 streets surrounding the state capitol park shall be subject to any police regulation that may be enacted by the city of Madison designating the manner of such parking or limiting the length of time which motor vehicles may be so parked in such public streets in the city.

(b) Eight areas, for the parking of motor vehicles at the curb on the capitol park side of the 4 streets surrounding the state capitol park, each area as near as lawfully permissible to each near side of the intersections of the streets with the driveways leading to the capitol building, are reserved for the parking of motor vehicles by those persons designated in sub. (3) and only emergency police regulations or city ordinances of the city of Madison are applicable to such areas. The number of motor vehicles to be parked in each area shall be designated in a parking plan approved by the joint committee on legislative organization. The department of administration shall mark and post the areas and number the parking spaces therein. Parking of motor vehicles in these areas is permitted only by persons whose motor vehicles are identified as specified in sub. (4), and the parking therein of any other vehicle is prohibited and any violation of this prohibition shall be punished as in sub. (2).

**(2)** (a) Except as authorized in sub. (3), the parking of any motor vehicle in any of the 4 driveways of the capitol park leading to the capitol building is prohibited. Parking of any motor vehicle on the grounds of any of the state office buildings shall be in accordance with rules and orders established by the department.

(b) The department shall establish a schedule of fees for parking during the state office hours specified in s. 230.35 (4) (f) at every state−owned office building for which the department has managing authority and which is located in a municipality served by an urban mass transit system for which state operating assistance is provided under s. 85.20, if the mass transit system serves a street which passes within 500 feet of the building. In addition, the department shall establish a schedule of fees for parking located in the city of Madison. The department may establish a schedule of fees for parking during other hours at any state−owned office building located in a municipality served by an urban mass transit system for which state operating assistance is provided under s. 85.20. In addition, the department may establish a schedule of fees for parking at other state facilities located in such a municipality.

(bm) Fees established under this subsection for parking at every facility, except the parking specified in par. (cm), shall be established so that the total amount collected equals the total costs of:

1. Administration of the parking program;

2. Promotion of alternate transportation programs under s. 16.82 (5); and

3. Parking facility maintenance and operation.

(c) Notwithstanding par. (bm), except as provided in s. 13.488 (1) (L), fees need not be imposed by the department for parking in a facility at any state−owned office building in a fiscal year, except the parking specified in par. (cm), if the department determines that, for any fiscal year:

1. Operating expenditures, including administration, collection and maintenance costs, necessitated solely by the implementation of paid parking at the facility in the preceding fiscal year exceeded gross parking revenues for that year; or

2. Estimated operating expenditures, including administration, collection and maintenance costs, necessitated solely by the implementation of paid parking at the facility will exceed the estimated gross parking revenues for that year.

(cm) Fees established under this subsection for parking located in the city of Madison shall be set so that all costs of land acquisition and construction, financing, administration, maintenance and operation are recovered from fee revenue. The department shall review and establish fees under this paragraph on an annual basis such that the costs of administration, maintenance and operation are fully recovered on an annual basis and the costs of land acquisition, construction and financing are fully recovered at the earliest possible time.

(d) Any person violating this subsection or any rule or order adopted pursuant thereto may be required to forfeit not less than $5 nor more than $25.

**(3)** The following persons or their designees may park motor vehicles identified as provided by sub. (4) in assigned parking

stalls and spaces in the parking areas designated in subs. (1) (b) and (2):

(a) Legislators and constitutional officers.

(b) Officers of the senate and assembly.

(c) Such state officers and employees as the governor directs, not to exceed 15.

**(4)** To facilitate the administration of sub. (3), the state protective service shall procure numbered identification tags which correspond with the numbered parking stalls and spaces, and shall issue such tags to applicants eligible under sub. (3) in accordance with the parking plan approved by the joint committee on legislative organization under sub. (1).

**(5)** Notwithstanding the limited allocation of parking areas for state purposes under sub. (1), the enforcement of parking regulations on the capitol park side of the 4 streets surrounding the state capitol park is vested exclusively in the designated employees of the state protective service.

**History:** 1975 c. 41, 267, 422; Stats. 1975 s. 16.843; 1979 c. 34, 221; 1981 c. 20; 1983 a. 174; 1985 a. 29; 1991 a. 269.

**Cross−reference:** See also ch. Adm 1, Wis. adm. code.

**16.844 Burning bituminous coal near capitol. (1)** It shall be unlawful to burn any bituminous coal for heating, power or any other purpose or purposes within any of the following blocks surrounding the capitol park in the city of Madison: Blocks 64, 65, 66, 67, 68, 71, 72, 73, 74, 75, 76, 77, 82, 83, 84, 85, 88, 89, 90, 91, 98, 99, 100, 101, 102, 103, 104, 105, 107, 108, 109 and 110 or in the streets or alleys adjoining said blocks, except in smoke preventing furnaces of such an efficiency that no smoke shall be visible emitting from the top or outlet of the stack or chimney.

**(2)** Any person who shall cause, allow, or permit bituminous coal to be burned in violation of this section shall forfeit the sum of $25 for each day or part thereof during which such violation continues.

**(3)** The secretary of administration, with the assistance of the department of justice, shall institute proper proceedings to collect fines for and restrain violations of this section.

**(4)** The limitations contained in this section are imposed for the protection of the state capitol and its contents.

**History:** 1975 c. 41 s. 51; 1989 a. 222 s. 3; Stats. 1989 s. 16.844.

**16.845 Use of state facilities. (1)** RULE; PENALTY. Except as elsewhere expressly prohibited, the managing authority of any facility owned by the state or by the University of Wisconsin Hospitals and Clinics Authority or leased from the state by the Fox River Navigational System Authority may permit its use for free discussion of public questions, or for civic, social, recreational or athletic activities. No such use shall be permitted if it would unduly burden the managing authority or interfere with the prime use of such facility. The applicant for use shall be liable to the state, to the Fox River Navigational System Authority, or to the University of Wisconsin Hospitals and Clinics Authority for any injury done to its property, for any expense arising out of any such use and for such sum as the managing authority may charge for such use. All such sums payable to the state shall be paid into the general fund and credited to the appropriation account for the operation of the facility used. The managing authority may permit such use notwithstanding the fact that a reasonable admission fee may be charged to the public. Whoever does or attempts to do an act for which a permit is required under this section without first obtaining the permit may be fined not more than $100 or imprisoned not more than 30 days or both. This subsection applies only to those facilities for which a procedure for obtaining a permit has been established by the managing authority.

**(2)** DEFINITIONS. In this section:

(a) "Facility" includes buildings and surrounding and connecting grounds.

(b) "Managing authority" means the board, commission, department or officer responsible by law for the management of the particular facility.

**History:** 1971 c. 183; 1995 a. 27; 2001 a. 16.

A group of churches is entitled to a permit under this section to use the capitol grounds for a civic or social activity even if the content of program is partly religious in nature. 68 Atty. Gen. 217.

**16.846 Rules relating to use, care and preservation of property under department control. (1)** (a) The department shall promulgate under ch. 227, and shall enforce or have enforced, rules of conduct for property leased or managed by the department. Unless the rule specifies a penalty as provided under par. (b), a person found guilty of violating a rule promulgated under this subsection shall be fined not more than $100 or imprisoned for not more than 30 days or both.

(b) A rule promulgated under par. (a) may provide that a person who violates the rule is subject to one of the following:

1. A lesser criminal penalty than the criminal penalty specified in par. (a).

2. A forfeiture of not more than $500.

**(2)** A forfeiture under sub. (1) (b) 2. may be sued for and collected in the name of the department before any court having jurisdiction of such action. An action for a forfeiture under sub. (1) (b) 2. may be brought by the department, by the department of justice at the request of the department, or by a district attorney.

**(3)** All fines imposed and collected under this section shall be transmitted to the county treasurer for disposition in accordance with s. 59.25 (3) (f) and (j). All forfeitures, including forfeitures of posted bail, if any, imposed and collected under this section shall be transmitted to the county treasurer for disposition in accordance with ss. 778.13 and 778.17.

**History:** 1995 a. 174; 1997 a. 35.

**Cross−reference:** See also s. Adm 2.14, Wis. adm. code.

**16.847 Energy efficiency program. (1)** DEFINITIONS. In this section:

(b) "State facilities" means all property owned and operated by the state for the purpose of carrying out usual state functions, including each institution within the University of Wisconsin System.

(c) "Utility expenses" means expenses incurred to provide heating, cooling and electricity to a state facility.

**(2)** ENERGY CONSERVATION CONSTRUCTION PROJECTS. (a) The department may provide funding to agencies, as defined in s. 16.70 (1e), for energy conservation construction projects at state facilities under the jurisdiction of the agencies to enhance the energy efficiency of the facilities. The department shall prescribe standards for evaluation of proposed projects and allocation of available moneys for those projects under this subsection.

(b) The department shall measure and verify each energy conservation construction project funded under this subsection in accordance with the performance measurement and verification guidelines adopted by the federal Energy Management Program.

(c) The department shall, to the extent feasible, use the procedures under s. 16.858 to carry out energy conservation construction projects funded under this subsection. In any contract entered into by the department under s. 16.858 that is funded under this subsection, the contract shall set forth the minimum savings in energy usage that will be realized by the state from construction of the project and the contractor shall guarantee that the savings will be realized.

**(3)** ASSESSMENTS. The department shall annually assess each agency that receives funding under sub. (2) in an amount determined by the department equivalent to the agency's proportionate share of the costs incurred under s. 20.867 (3) (kd) for principal repayment and interest costs on obligations incurred in financing energy conservation construction projects at agency facilities, for

payments determined by the building commission under s. 13.488 (1) (m) that are attributable to the proceeds of those obligations, and for payments under an agreement or ancillary arrangement entered into under s. 18.06 (8) (a). The department may, in addition, assess those agencies for an amount not greater than the amount by which the annual savings, if any, in the agency's energy costs generated as a result of an energy conservation construction project that was funded by the department under sub. (2), as determined by the department, exceeds the agency's proportionate share of the costs incurred under s. 20.867 (3) (kd). Each agency shall pay any portion of each assessment that is attributable to savings in the agency's energy costs to the department and shall pay the remaining portion of each assessment to the building commission. The department shall credit all revenues received by the building commission under this subsection to the appropriation account under s. 20.867 (3) (kd) and shall credit all revenues received by the department under this subsection to the appropriation account under s. 20.505 (5) (ke).

**(8)** REPAYMENT AGREEMENTS. The department may annually transfer repayments under agreements to obtain loans from the energy efficiency fund under s. 16.847 (6), 1999 stats., from the appropriations specified in the agreements to the general fund. The amount of each annual repayment shall equal the amount of annual savings in utility expenses realized as a result of the energy efficiency project that was funded by a loan. The department shall determine the amount of annual savings in utility expenses realized as a result of an energy efficiency project.

**History:** 1991 a. 269; 1993 a. 16, 414; 1995 a. 27; 1997 a. 237; 2001 a. 16, 104; 2007 a. 20; 2009 a. 28.

### 16.848 Sale or lease of state property or facilities. (1)

(a) Except as provided in sub. (2), the department may offer for sale or lease any state−owned real property, if the department determines that the sale or lease is in the best interest of the state, unless prohibited under the state or federal constitution or federal law or the sale is conducted as a part of a procedure to enforce an obligation to this state. Any sale may be either on the basis of public bids, with the department reserving the right to reject any bid in the best interest of the state, or on the basis of negotiated prices as determined through a competitive or transparent process. If the department receives an offer to purchase or lease property offered under this subsection, the department may submit a report to the building commission recommending acceptance of the offer. The report shall contain a description of the property and the reasons for the recommendation. The department may recommend the sale or lease of property with or without the approval of the agency, as defined in s. 16.52 (7), having jurisdiction over the property and regardless of whether the property is included in an inventory submitted under s. 13.48 (14) (d). If the building commission approves the proposed sale or lease, the department shall submit the proposed sale or lease to the joint committee on finance for approval under par. (b).

(b) If the department proposes to sell or lease any property identified in par. (a), the department shall first notify the joint committee on finance in writing of its proposed action. The department shall not proceed with the proposed action unless the proposed action is approved by the committee. Together with any notification, the department shall also provide all of the following:

1. The estimated value of the property as determined by the department and by at least one qualified privately owned assessor.

2. The full cost of retiring any remaining public debt incurred to finance the acquisition, construction, or improvement of the property.

3. A cost−benefit analysis that considers the short−term and long−term costs and benefits to the state from selling or leasing the property.

4. The length and conditions of any proposed sale or lease between this state and a proposed purchaser or lessee.

5. The estimated budgetary impact of the proposed sale or lease upon affected state agencies for at least the current and following fiscal biennium.

5m. The methodology to ensure the competitive and transparent sale of the property.

6. Any other information requested by the committee.

(c) Except with respect to property identified in sub. (2), if any agency, as defined in s. 16.52 (7), has authority to sell or lease real property under any other law, the authority of that agency does not apply after the department notifies the agency in writing that an offer of sale or sale, or a lease agreement, is pending with respect to the property under this paragraph. If the sale or lease is not completed and no further action is pending with respect to the property, the authority of the agency to sell or lease the property is restored. If the department sells or leases any state−owned real property under this paragraph, the department may attach such conditions to the sale or lease as it finds to be necessary or appropriate to carry out the sale or lease in the best interest of the state. If the department sells or leases a state−owned heating, cooling, or power plant under this paragraph, the department may contract with the purchaser or lessee to purchase the output of the plant.

**(1e)** If the department sells or leases any real property under sub. (1) that was under the jurisdiction of an agency, as defined in s. 16.52 (7), prior to the sale or lease, the agency shall convey all systems, fixtures, or additional property interests specified by the department to the purchaser or lessee of the property on terms specified by the department. If the department sells or leases a state−owned heating, cooling, or power plant that is under the jurisdiction of an agency, as defined in s. 16.52 (7), the agency shall convey all real and personal property associated with the plant to the purchaser or lessee on terms specified by the department.

**(1m)** If any property that is proposed to be sold by the department under sub. (1) is co−owned by a nonstate entity, the department shall afford to that entity the right of first refusal to purchase the share of the property owned by the state on reasonable financial terms established by the department.

**(1s)** (a) If the department sells or leases any facility under sub. (1) that is operated by an agency, as defined in s. 16.52 (7), on the day prior to the effective date of the sale or lease the secretary shall, notwithstanding s. 16.50 (1), require submission of expenditure estimates for approval under s. 16.50 (2) for each agency that proposes to expend moneys from any appropriation for the operation of the facility during the fiscal biennium in which the facility is sold or leased.

(b) Notwithstanding s. 16.50 (2), the secretary shall disapprove any such estimate for the period during which the facility is not operated by the agency. Subject to approval under par. (d), the secretary may then require the use of the amounts of any disapproved expenditure estimates for the purpose of purchase of contractual services from the facility or payment of the costs of purchasing services that were provided by the facility from an alternative source. Subject to approval under par. (d), if the department sells or leases a facility under this subsection, the secretary may identify any full−time equivalent positions authorized for the agency that was operating the facility the duties of which primarily relate to the management or operation of the facility, and may decrease the authorized full−time equivalent positions for the agency by the number of positions so identified effective on the effective date of the sale or lease.

(c) Notwithstanding s. 20.001 (3) (a) to (c) and subject to approval under par. (d), the secretary may lapse or transfer to the general fund from the unencumbered balance of appropriations to any agency, other than sum sufficient appropriations or appropriations of program revenues to the Board of Regents of the University of Wisconsin System or appropriations of segregated or federal revenues, any amount appropriated to an agency that is

determined by the secretary to be allocated for the management or operation of the facility that was sold or leased effective on the effective date of the sale or lease.

(d) Prior to taking any action to reallocate authorized expenditures, decrease authorized positions, or lapse or transfer moneys under par. (b) or (c), the secretary shall submit the proposed action in writing to the joint committee on finance. The secretary shall not proceed with the proposed action unless the proposed action is approved by the committee.

**(2)** (am) Subsection (1) does not apply to any property for which the cost of acquisition, construction, and improvement was financed with at least 50 percent federal funds or at least 50 percent gift or grant funds.

(b) Subsection (1) does not apply to agricultural land acquired by the Board of Regents of the University of Wisconsin System under s. 36.33 (1).

(c) Subsection (1) does not apply to property sold by the department under s. 16.98 (3).

(d) Subsection (1) does not apply to lands under the jurisdiction of the board of commissioners of public lands.

(e) Subsection (1) does not apply to property under the jurisdiction of the department of natural resources, except central or district office facilities.

(f) Subsection (1) does not apply to lands acquired with revenues collected under s. 70.58.

(g) Subsection (1) does not apply to property that is subject to sale by the department of veterans affairs under s. 45.32 (7).

(gc) Subsection (1) does not apply to property that is subject to sale by the department of military affairs under s. 321.03 (2) (b).

(gg) Subsection (1) does not apply to property that is conveyed by the department of corrections under s. 301.25.

(gn) Subsection (1) does not apply to property that is subject to sale by the state under s. 20.909 (2).

(gr) Subsection (1) does not apply to land that is sold or traded by the Kickapoo reserve management board under s. 41.41 (7).

(gt) Subsection (1) does not apply to property that is donated by the department of transportation under s. 84.09 (5r).

(gx) Subsection (1) does not apply to any property that is owned or leased by the investment board.

(h) The department shall not sell any property under this section that is leased by the state until the lease expires or the lease is modified, renewed, or extended, whichever first occurs, without consent of the lessee.

(i) Subsection (1) does not apply to property that is traded by the department under sub. (5).

**(4)** (a) Except as provided in s. 13.48 (14) (e), if there is any outstanding public debt used to finance the acquisition, construction, or improvement of any property that is sold or leased under sub. (1), the department shall deposit a sufficient amount of the net proceeds from the sale or lease of the property in the bond security and redemption fund under s. 18.09 to repay the principal and pay the interest on the debt, and any premium due upon refunding any of the debt. If there is any outstanding public debt used to finance the acquisition, construction, or improvement of any property that is sold or leased under sub. (1), the department shall then provide a sufficient amount of the net proceeds from the sale or lease of the property for the costs of maintaining federal tax law compliance applicable to the debt. If the property was acquired, constructed, or improved with federal financial assistance, the department shall pay to the federal government any of the net proceeds required by federal law. If the property was acquired by gift or grant or acquired with gift or grant funds, the department shall adhere to any restriction governing use of the proceeds. Except as required under ss. 13.48 (14) (e), 20.395 (9) (qd), and 51.06 (6), if there is no such debt outstanding, there are no moneys payable to the federal government, and there is no restriction governing use of the proceeds, and if the net proceeds exceed the amount required to be deposited, paid, or used for another purpose under this subsection, the department shall use the net proceeds or remaining net proceeds to pay principal and interest costs on outstanding public debt issued to finance the acquisition, construction, or improvement of property. If any net proceeds remain thereafter, the department shall use the proceeds to pay principal and interest costs on other outstanding public debt.

(b) For the purpose of paying principal and interest costs on other outstanding public debt under par. (a), the secretary may cause outstanding bonds to be called for redemption on or following their optional redemption date, establish one or more escrow accounts to redeem bonds at their optional redemption date, or purchase bonds in the open market. To the extent practical, the secretary shall consider all of the following in determining which public debt to redeem:

1. To the extent that debt service on the property being sold or leased was paid from a segregated fund, other outstanding public debt related to that segregated fund should be redeemed.

3. The extent to which general obligation debt that was issued to acquire, build, or improve the property being sold or leased is subject to current optional redemption, would require establishment of an escrow, or could be assigned for accounting purposes to another statutory bond purpose.

4. The fiscal benefit of redeeming outstanding debt with higher interest costs.

5. The costs of maintaining federal tax law compliance in the selection of general obligation debt to be redeemed.

(c) If there are any outstanding revenue obligations, issued pursuant to subch. II of ch. 18, used to finance the acquisition, construction, or improvement of any property that is sold or leased under sub. (1), the department shall deposit a sufficient amount of the net proceeds from the sale or lease of the property in the respective redemption fund provided under s. 18.561 (5) or 18.562 (3) to repay the principal and pay the interest on the revenue obligations, and any premium due upon refunding any of the revenue obligations. If there are any outstanding revenue obligations, issued pursuant to subch. II of ch. 18, used to finance the acquisition, construction, or improvement of any property that is sold or leased under sub. (1), the department shall then provide a sufficient amount of the net proceeds from the sale or lease of the property for the costs of maintaining federal tax law compliance applicable to the revenue obligations. For the purpose of paying principal and interest costs on other outstanding revenue obligations, the secretary may cause outstanding revenue obligations to be called for redemption on or following their optional redemption date, establish one or more escrow accounts to redeem obligations at their optional redemption date, or purchase bonds on the open market. Except as required under ss. 13.48 (14) (e), 20.395 (9) (qd), and 51.06 (6), if the net proceeds exceed the amount required to be deposited, paid, or used for another purpose under this paragraph, the department shall use the net proceeds or remaining net proceeds to pay principal and interest costs on other similar revenue obligations.

**(5)** (a) In this subsection, "navigational system" has the meaning given in s. 237.01 (5).

(b) The department may trade a parcel of land that is part of the navigational system for another parcel of land if the parcels are of comparable value and any of the following applies:

1. The parcel to be received by the department is more suitable to the purposes of the navigational system than the parcel to be traded by the department.

2. The trade consolidates navigational system land.

3. The trade settles a boundary dispute or encroachment.

**History:** 2005 a. 25; 2007 a. 20 ss. 113, 114, 9121 (6) (a); 2007 a. 100; 2009 a. 180; 2011 a. 32; 2013 a. 20; 2013 a. 173 s. 33; 2015 a. 230, 357.

**16.849 Facility design services for state agencies.** The department may provide facility design services to agencies, as defined in s. 16.70 (1e). The department may assess a fee to agen-

cies for which the department performs services under this section.

**History:** 2013 a. 20.

SUBCHAPTER V

ENGINEERING

**16.85 Department of administration; powers, duties.** The department of administration shall exercise the powers and duties prescribed by ss. 16.85 to 16.91:

**(1)** To take charge of and supervise all engineering or architectural services or construction work, as defined in s. 16.87 (1) (a), performed by, or for, the state, or any department, board, institution, commission, or officer of the state, including nonprofit−sharing corporations organized for the purpose of assisting the state in the construction and acquisition of new buildings or improvements and additions to existing buildings as contemplated under ss. 13.488, 36.09, and 36.11, except work to be performed for a project specified in s. 13.48 (10) (c), and except the engineering, architectural, and construction work of the department of transportation; and the engineering service performed by the department of safety and professional services, department of revenue, public service commission, department of health services, and other departments, boards, and commissions when the service is not related to the maintenance, and construction and planning, of the physical properties of the state.

**(2)** To furnish engineering, architectural, project management, and other building construction services whenever requisitions therefor are presented to the department by any agency. The department may deposit moneys received from the provision of these services in the account under s. 20.505 (1) (kc) or in the general fund as general purpose revenue — earned. In this subsection, "agency" means an office, department, independent agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority created in subch. II of ch. 114 or in ch. 231, 233, 234, 237, 238, or 279.

**(3)** To act and assist any department, board, commission or officer requesting such cooperation and assistance, in letting contracts for engineering or architectural work authorized by law and in supervising the work done thereunder;

**(4)** To approve the appointment of a chief operating engineer for each state−owned or operated heating, cooling or power plant and pumping station, to provide for the methods of operating the plants and stations and to design records and forms for reporting accurately the cost per unit of product or service. The superintendent or other person having charge of each plant or station shall not only report to the agency which operates the plant or station but to the secretary in the manner and at such times as the secretary determines. In this subsection, "agency" has the meaning given under sub. (2).

**(5)** To promote the use of energy conservation methods in state−owned facilities, to implement and refine a statewide energy monitoring system and to develop and implement initiatives of replacing fossil fuels with renewable energy fuels.

**(6)** To approve the appointment of a principal engineer or architect for departments, boards and commissions and when such continuous service is needed. No such engineer or architect shall be employed without the written approval of the secretary.

**(7)** To rebuild and repair discarded machinery of the several state institutions when found feasible, and put the same back into service in the same department or in any other state department, and upon requisition to furnish services and material and loan equipment at fair rentals based on the cost thereof, in connection with the construction, operation and maintenance of heating and power plants, utilities and equipment.

**(10)** To prepare in cooperation with the state agencies concerned, plans for the future growth and development of various state institutions and to serve as technical adviser to the building commission in connection with the development of the state long−range building program provided in ss. 13.48 and 13.482.

**(12)** To review and approve plans and specifications for any building or structure that is constructed for the benefit of the University of Wisconsin System or any institution thereof, and to periodically review the progress of any such building or structure during construction to assure compliance with the approved plans and specifications. This subsection does not apply to projects specified in s. 13.48 (10) (c).

**(13)** To assist, upon request, any local exposition district under subch. II of ch. 229 in the preparation of the statement required under s. 229.46 (5) (a) or the specifications required under s. 229.46 (5) (b).

**(14)** To review and approve the design and specifications of any construction or improvement project of the University of Wisconsin Hospitals and Clinics Authority on state−owned land, to approve the decision to construct any such construction or improvement project and to periodically review the progress of the project during construction to assure compliance with the approved design and specifications. This subsection does not apply to any construction or improvement project of the authority that costs less than the amount that is required to be specified in the lease agreement between the authority and the board of regents of the University of Wisconsin System under s. 233.04 (7) (d).

**(15)** To provide or contract for the provision of professional engineering, architectural, project management and other building construction services on behalf of school districts for the installation or maintenance of electrical and computer network wiring. The department shall assess fees for services provided under this subsection and shall credit all revenues received to the appropriation account under s. 20.505 (1) (im).

**(16)** To review and approve the design and specifications of any rehabilitation or repair project of the Fox River Navigational System Authority on state−owned land, to approve the decision to proceed with the project, and to periodically review the progress of the project during construction to assure compliance with the approved design and specifications.

**History:** 1971 c. 42; 1973 c. 90; 1973 c. 335 s. 13; 1977 c. 29 s. 1654 (8) (c); 1979 c. 221; 1983 a. 36 s. 96 (4); 1985 a. 29; 1987 a. 142, 399; 1989 a. 31, 336; 1991 a. 39, 269, 316; 1993 a. 263; 1995 a. 27 ss. 398 to 400, 9116 (5), 9126 (19), 9130 (4); 1997 a. 27; 1999 a. 197; 2001 a. 16; 2005 a. 74, 149, 335; 2007 a. 20 ss. 115b, 9121 (6) (a); 2007 a. 97; 2009 a. 28, 185; 2011 a. 7, 10, 32; 2013 a. 20, 166; 2015 a. 55.

**Cross−reference:** See also chs. Adm 20 and 24, Wis. adm. code.

**16.851 Plans for state buildings, structures or facilities.** Except as the department otherwise provides by rule, records of the department containing plans or specifications for any state−owned or state−leased building, structure or facility, or any proposed state−owned or state−leased building, structure or facility, are not subject to the right of public inspection or copying under s. 19.35 (1). If the department transfers any records containing any such plans or specifications to any other authority as defined in s. 19.32 (1), the department shall require the authority to agree in writing not to make the record available for public inspection or copying except as the department otherwise permits by rule.

**History:** 1995 a. 27.

**16.8511 Secretary of administration; powers, duties.** **(1)** The secretary or the secretary's designated assistants shall make a biennial inspection of each building of each institution of the state. The secretary may delegate this responsibility to the board, commission or officer in charge of such institution.

**(2)** The secretary may delegate any of the work under this subchapter to the various state agencies when the secretary deter-

mines that the best interests of the state will be served. All such delegation will be in writing and accompanied by the proper rules and guidelines the agencies must follow to ensure performance to the satisfaction of the secretary.

**History:** 2005 a. 149 ss. 67, 69.

**16.854 Services provided to professional baseball park districts. (1)** In this section:

(a) "Minority business" has the meaning given in s. 16.287 (1) (e).

(b) "Minority group member" has the meaning given in s. 16.287 (1) (f).

(c) "Women's business" means a sole proprietorship, partnership, joint venture or corporation that is at least 51 percent owned, controlled and actively managed by women.

**(2)** Subject to the requirements of s. 16.82 (7), the department may, upon request of any local professional baseball park district, if the district has entered into a lease agreement with the department under s. 16.82 (7), take charge of and supervise engineering or architectural services or construction work, as defined in s. 16.87 (1) (a), performed by, or for, the district for compensation to be agreed upon between the department and the district. In connection with such services or work, the department may furnish engineering, architectural, project management and other building construction services whenever requisitions therefor are presented to the department by the district. If the district has entered into a lease agreement with the department under s. 16.82 (7), the department may also assist the district, upon request of the district, in letting contracts for engineering, architectural or construction work authorized by law and in supervising the work done thereunder. The department may award any such contract for any combination or division of work it designates and may consider any factors in awarding a contract including price, time for completion of work and the qualifications and past performance of a contractor. In awarding contracts under this section for the construction of baseball park facilities, as defined in s. 229.65 (1), the department shall ensure that any person who is awarded a contract agrees, as a condition to receiving the contract, that his or her goal shall be to ensure that at least 25 percent of the employees hired because of the contract will be minority group members and at least 5 percent of the employees hired because of the contract will be women. It shall also be a goal of the department to ensure that at least 25 percent of the aggregate dollar value of contracts awarded for the construction of such facilities in the following areas are awarded to minority businesses and at least 5 percent of the aggregate dollar value of contracts awarded for the construction of such facilities in the following areas are awarded to women's businesses:

(a) Contracts for the construction of baseball park facilities.

(b) Contracts for professional services related to the construction of baseball park facilities.

(c) Contracts for the development of baseball park facilities.

**(3)** It shall be a goal of the department, with regard to each of the contracts described under sub. (2) (a), (b) and (c), to award at least 25 percent of the dollar value of such contracts to minority businesses and at least 5 percent of the dollar value of such contracts to women's businesses. Sections 16.85, 16.8511, 16.855, and 16.87 do not apply to services provided or contracted by the department under this section.

**History:** 1995 a. 56; 2005 a. 149; 2011 a. 32; 2013 a. 166.

**16.855 Construction project contracts. (1g)** In this section:

(ag) "Board of Regents" means the Board of Regents of the University of Wisconsin System.

(ar) "Mechanical, electrical, or plumbing subcontractor" is a contractor that performs mechanical, electrical, plumbing, or fire protection work and enters into a contract with a general prime contractor to perform their division of work.

(b) "Qualified bidder" means a person that the department certifies under sub. (9m) (b) 1.

(c) "Qualified responsible bidder" means a person who is a qualified bidder and who is a responsible bidder.

(d) "Responsible bidder" means a person that the department certifies under sub. (9m) (b) 2.

(e) "Single prime contracting" means bidding and contracting through a process in which only a general prime contractor has a contractual relationship with the state and all mechanical, electrical, or plumbing subcontractors are identified by the department or the Board of Regents and are subcontractors to the general prime contractor.

(f) "UW gifts and grants project" means a construction project funded entirely with gifts and grants made to the University of Wisconsin System.

**(1m)** The department shall let by contract to the lowest qualified responsible bidder all construction work when the estimated construction cost of the project exceeds $50,000, except for construction work authorized under s. 16.858 and except as provided in sub. (1r) or (10m) or s. 13.48 (19). If factors other than dollar amounts are required to be evaluated for a project, the department shall specify a formula that will convert the other factors into a dollar value for comparison.

**(1r)** If a bidder is not a Wisconsin firm and the department determines that the state, foreign nation or subdivision thereof in which the bidder is domiciled grants a preference to bidders domiciled in that state, nation or subdivision in making governmental purchases, the department shall give a preference over that bidder to Wisconsin firms, if any, when awarding the contract, in the absence of compelling reasons to the contrary. The department may enter into agreements with states, foreign nations and subdivisions thereof for the purpose of implementing this subsection.

**(2)** Except for projects authorized under s. 16.858, whenever the estimated construction cost of a project exceeds $50,000, or if less and in the best interest of the state, the department shall:

(a) Advertise for proposals by publication of a class 1 notice, under ch. 985, in the official state newspaper. Similar notices may be placed in publications likely to inform potential bidders of the project. The department may solicit bids from qualified contractors to insure adequate competition. All advertisements shall contain the following information:

1. Location of work and the name of the owner.

2. Scope of the work.

3. Amount of bid guarantee required.

4. Date, time and place of bid opening.

5. Date when and place where plans will be available.

6. That the department shall consider only bids from persons who are responsible bidders and, unless sub. (9m) (ar) 2. applies, qualified bidders.

(b) 1. Require that a guarantee of not less than 10 percent of the amount of the bid shall be included with each bid submitted guaranteeing the execution of the contract within 10 days of offering, if offered within 30 days after the date set for the opening thereof. The parties may agree to extend the time for offering of the contract beyond 30 days after the opening of bids.

2. If the federal government participates in a state project, the bid guarantee required in this paragraph controls, unless the federal government makes a specific provision for a different bid guarantee.

(c) Publicly open and read aloud, at the time and place specified in the notice, all bids. Within a reasonable time after opening, tabulations of all bids received shall be available for public inspection.

(d) Not allow or make any correction or alteration of a bid, except as provided in sub. (6).

**(3)** At any time prior to the published time of opening, a bid may be withdrawn on written request submitted to the department

by the bidder or the bidder's agent, without prejudice to the right of the bidder to file a new bid.

**(4)** If a bid contains an error, omission or mistake, the bidder may limit liability to the amount of the bidder's bid guarantee by giving written notice of intent not to execute the contract to the department within 72 hours of the bid opening. The department of administration, with the approval of the attorney general, may settle and dispose of cases and issues arising under this subsection. However, if no such settlement is obtained, the bidder is not entitled to recover the bid guarantee unless the bidder proves in the circuit court for Dane County that in making the mistake, error or omission the bidder was free from negligence.

**(5)** Any or all bids may be rejected if, in the opinion of the department, it is in the best interest of the state. The reasons for rejection shall be given to the bidder or bidders in writing.

**(6)** Nothing contained in this section shall prevent the department from negotiating deductive changes in the lowest qualified bid.

**(7)** The department may issue contract change orders, if they are deemed to be in the best interests of the state.

**(9m)** (ag) In this subsection, "bidder" includes a potential bidder.

(ar) 1. The department shall certify bidders as qualified bidders under par. (b) 1. and responsible bidders under par. (b) 2. and shall administer a registration process for all bidders submitting bids on any construction project under this section. The department shall issue, in a timely manner, a certification decision on a complete application for certification. A certification under this subdivision is valid for 2 years except the department may decertify a bidder if the department determines that the bidder no longer meets the qualifications under par. (b) and if the department follows a decertification process developed by rule that provides to the bidder notice, hearing, and a means to appeal.

2. Notwithstanding sub. (1m) or (14) (d), the department may waive the condition of certification as a qualified bidder if the project is of such magnitude as to limit competition if the conditions under par. (b) 1. were required.

3. The department shall consider for certification under par. (b) associations consisting of at least 2 contracting firms that are organized for the purpose of entering into a construction contract as a single entity if at least one of the contracting firms is qualified under par. (b) and if the assignment of, and provisions for the continuity of, the various responsibilities within the association are agreed upon before the contract is awarded.

(b) 1. To be certified as a qualified bidder, a bidder must meet all of the following conditions:

a. The bidder has completed at least one project that involved similar work to the work being bid and the project was at least 50 percent of the size or value of the division of the project being bid. If the department determines that more experience is necessary for a particular project, the department may include additional requirements in the specifications and certify bidders accordingly.

b. The bidder has access to all necessary equipment and the organizational capacity and technical competence necessary to perform the project work properly and expeditiously.

c. If the department so requires or the bidder will be considered unqualified, the bidder has submitted a sworn statement as to financial ability, equipment, and experience in construction and other information as may be necessary to determine the bidder's competency.

2. To be certified as a responsible bidder, a bidder must meet all of the following conditions:

a. The bidder maintains a permanent place of business.

b. The bidder submits a sworn statement, upon the department's request, that indicates that the bidder has adequate financial resources to complete the work being bid, taking into account any other work the bidder is currently under contract to complete.

c. The bidder is bondable for the term of the proposed contract and is able to obtain a 100 percent performance bond and a separate 100 percent payment bond.

d. The bidder has a record of satisfactorily completing projects. In determining this factor, the department shall consider if the bidder has completed all contracts in accordance with drawings and specifications; diligently pursued execution of the work and completed contracts according to the time schedule, taking account of extensions granted; fulfilled guarantee requirements of contracts; if the contract included an affirmative action program requirement, complied with the requirement; and, if the contract included a safety program requirement, complied with the requirement.

e. The bidder is not on an ineligible list that the department maintains under s. 16.705 (9) or 16.765 (9) or on a list that another agency maintains for persons who violated construction−related statutes or administrative rules.

f. The bidder has been in business for at least 12 months.

g. The bidder is a legal entity and authorized to do business in Wisconsin.

h. The bidder has performed at least one other public project for a government entity.

i. The bidder can provide information, upon request, to the department on the bidder's ownership, management, and control.

j. In any jurisdiction, the bidder, in the previous 10 years, has not been debarred from any government contracts and has not been found to have committed tax avoidance or evasion.

k. In any jurisdiction, in the previous 10 years, the bidder has not been disciplined under a professional license.

L. In any jurisdiction, none of the bidder's employees and no member of the bidder's organization has been disciplined under a professional license that is currently in use.

**(10)** When the department believes that it is in the best interests of the state to contract for certain articles or materials available from only one source, it may contract for said articles or materials without the usual statutory procedure, after a publication of a class 1 notice, under ch. 985, in the official state newspaper.

**(10m)** (ac) In this subsection, "disabled veteran−owned business" means a business certified by the department of administration under s. 16.283 (3).

(am) 1. In awarding construction contracts the department shall attempt to ensure that 5 percent of the total amount expended in each fiscal year is awarded to contractors and subcontractors which are minority businesses, as defined under s. 16.75 (3m) (a) 4.

2. In awarding construction contracts, the department shall attempt to ensure that at least 1 percent of the total amount expended in each fiscal year is awarded to contractors and subcontractors that are disabled veteran−owned businesses.

3. The department may award any contract to a minority business or disabled veteran−owned business, or a business that is both a minority business and a disabled veteran−owned business, if the business is a qualified responsible bidder and the business submits a bid that is no more than 5 percent higher than the apparent low bid.

(b) Upon completion of any contract, the contractor shall report to the department any amount of the contract that was subcontracted to minority businesses or disabled veteran−owned businesses.

(c) The department shall maintain and annually publish data on contracts awarded to minority businesses and disabled veteran−owned businesses under this subsection and ss. 16.87 and 84.075.

**(10n)** (a) In this subsection, "minority group member" has the meaning given in s. 16.287 (1) (f).

(b) The department shall enter into a memorandum of understanding with the state fair park board which shall specify proce-

dures for construction work and professional services contracts to be performed for the state fair park board under which any person who is awarded such a contract shall agree, as a condition to receiving the contract, that his or her goal shall be to ensure that at least 25 percent of the employees hired because of the contract will be minority group members and at least 5 percent of the employees hired because of the contract will be women.

**(10p)** For each proposed construction project, the department shall ensure that the specifications require the use of recovered materials and recycled materials, as defined under s. 16.70 (11) and (12), to the extent that such use is technically and economically feasible.

**(10s)** (a) The department shall, by rule, prescribe and annually review and revise as necessary energy efficiency standards for equipment that is installed as a component of a construction project and that relates to heating, ventilation, air conditioning, water heating or cooling, lighting, refrigeration, or any other function that consumes energy. The standards shall meet or exceed current applicable guidelines of the federal environmental protection agency relating to energy efficiency of the functions specified in this paragraph, guidelines that apply to the federal energy management program under 42 USC 8251 et seq., and standards established by the American society of heating, refrigerating and air−conditioning engineers.

(b) The department shall ensure that the specifications for any equipment that is designed for heating, ventilation, air conditioning, water heating or cooling, lighting, refrigeration, or any other function that consumes energy under any construction project contract administered by the department meet applicable standards established under par. (a). If there is no standard under par. (a) applicable to the type of equipment being purchased or if the equipment meeting that standard is not reasonably available, the department shall ensure that energy consumption within a building, structure, or facility and all equipment that is purchased under each contract administered by the department maximizes energy efficiency to the extent technically and economically feasible. The department shall not determine that equipment that meets the applicable standard under par. (a) either is not reasonably available on the basis of cost alone or is not cost−effective unless the difference in the cost of the purchase and installation of the equipment that meets the standard and the equipment that would otherwise be installed is greater than the difference in the cost of operating the equipment that meets the standard and the equipment that would otherwise be installed over the anticipated life of the equipment.

**(11)** A contractor shall be liable for any damages to another contractor working on the same project caused by reason of the former's default, act or nonperformance.

**(12)** Nothing contained in this section shall be construed so as to make contracts let under this section subject to s. 66.0901.

**(12m)** The Board of Regents may let UW gifts and grants projects through single prime contracting. If the Board of Regents lets a UW gifts and grants project through single prime contracting, this section does not apply to the project, except for subs. (13), (14), and (14m).

**(13)** (a) 1. In any project under this section let under single prime contracting, the department or the Board of Regents shall identify, as provided under par. (b), the mechanical, electrical, or plumbing subcontractors who have submitted the lowest bids and who are qualified responsible bidders. A general prime contractor who is submitting a bid under sub. (14) shall include the subcontractors so identified.

2. In any project under this section that is let under s. 13.48 (19), the department shall identify, as provided under par. (b), the mechanical, electrical, or plumbing subcontractors who have submitted the lowest bids and who are qualified responsible bidders. The contractor awarded a contract under s. 13.48 (19) shall contract with the mechanical, electrical, or plumbing subcontractors so identified.

(b) For purposes of identifying subcontractors under par. (a), the department or the Board of Regents shall develop and administer an open and public bidding process. The department shall follow the requirements and procedures under sub. (2). The Board of Regents shall follow the requirements and procedures specified for the department under sub. (2) and has the power specified for the department under sub. (6). Within 48 hours of the deadline for a mechanical, electrical, or plumbing contractor to submit a bid, the department or board shall post on its Internet site the names of the bidders and the amount of each bid. No more than 5 days after the deadline, the department or board shall post on its Internet site and provide public notice of the lowest bidders who are qualified responsible bidders. The department or board shall post on its Internet site the bids, including the bid documents, identified under this paragraph as the lowest bids and they shall be open to public inspection under s. 19.35 (1). No other bids under this paragraph may be on the Internet site or open to public inspection.

**(14)** (am) Except as provided in s. 13.48 (19), the department shall let all construction projects that exceed $185,000 through single prime contracting. The department may not request or accept any alternate bids when letting a construction project through single prime contracting.

(b) 1. The state is not liable to a contractor for damage from delay caused by another contractor if the department or the Board of Regents takes reasonable action to require the delaying contractor to comply with its contract. If the state is not liable under this subdivision, the delayed contractor may bring an action for damages against the delaying contractor.

2. Except as otherwise provided by law, the state is not liable for any damages to a subcontractor identified under sub. (13) (a) that enters into a contract with a general prime contractor under par. (e).

(bm) If the bid is being let through single prime contracting, bidders for the general prime contractor who are responsible qualified bidders shall submit their bids to the department or the Board of Regents no later than 5 days after the successful subcontractor bids become available to the public under sub. (13) (b). Within 48 hours of the deadline for a general prime contractor to submit a bid, the department or board shall post on its Internet site the tabulations of all bids that identify the names of the general prime contractors that bid and the amount of each bid and shall make the tabulations and amounts available at the department or board if they are unavailable on the Internet site.

(c) The department or the Board of Regents shall reject any bid for the general prime contractor from a bidder who submits a bid that includes contractors other than the ones identified under sub. (13) (a). The award of a contract may not be finalized until the department or board approves the required performance bond and certificate of insurance.

(d) Except as provided in sub. (10m) (am), the department or the Board of Regents shall award all single prime contracts to the lowest bidder who is a qualified responsible bidder that results in the lowest total construction cost for the project.

(e) Within 30 days after the deadline under par. (bm) for bidders for the general prime contractor to submit their bids, the department or the Board of Regents shall notify the general prime contractor bidder that was awarded the contract under par. (d). The contractor who is awarded the contract shall enter into contracts with the mechanical, electrical, or plumbing subcontractors identified under par. (13) (a), shall ensure that any contract meets the requirements under sub. (14m) (a) and (b), and shall comply with the requirements under sub. (14m) (c) and (d). The department or board shall make the final bid results available on its Internet site at the time it provides the written, official notice to the successful general prime contractor bidder notifying the contractor that the contract is fully executed and that the contractor is authorized to begin work on the project.

**(14m)** (a) Any contract entered into between a general prime contractor and a subcontractor under sub. (14) (e) must contain all of the following clauses:

**Prompt Payment.** (General prime contractor) shall pay (mechanical, electrical, or plumbing subcontractor) in accordance with section 16.855 (19) (b), Wisconsin stats., for work that has been satisfactorily completed and properly invoiced by (mechanical, electrical, or plumbing subcontractor). A payment is timely if it is mailed, delivered, or transferred to (mechanical, electrical, or plumbing subcontractor) by the deadline under section 16.855 (19) (b), Wisconsin stats.

If (mechanical, electrical, or plumbing subcontractor) is not paid by the deadline in this contract, (general prime contractor) shall pay interest on the balance due from the eighth day after the (general prime contractor) receives payment from the (Department of Administration or Board of Regents) for the work for which payment is due and owing to (mechanical, electrical, or plumbing subcontractor), at the rate specified in section 71.82, Wisconsin stats., compounded monthly.

A (mechanical, electrical, or plumbing subcontractor) that receives payment as provided under this contract and that subcontracts with another entity shall pay those subcontractors, and be liable for interest on late payments to those subcontractors, in the same manner as (general prime contractor) is required to pay (mechanical, electrical, or plumbing subcontractor) under this contract.

**Insurance and Bonds.** (Mechanical, electrical, or plumbing subcontractor) shall not commence work under this contract until it has obtained all necessary insurance required of (mechanical, electrical, or plumbing subcontractor) in the contract between the (general prime contractor) and the (Department of Administration or Board of Regents).

(Mechanical, electrical, or plumbing subcontractor) shall provide a separate 100 percent performance bond and a separate 100 percent payment bond to the benefit of the (general prime contractor) as the sole named obligee. Original bonds shall be given to the (general prime contractor) and a copy shall be given to the (Department of Administration or Board of Regents) no later than 10 days after execution of this contract.

**Indemnification.** To the fullest extent permitted by law, (mechanical, electrical, or plumbing subcontractor) shall defend, indemnify, and hold harmless (general prime contractor) and its officers, directors, agents, and any others whom (general prime contractor) is required to indemnify under its contract with the (Department of Administration or Board of Regents), and the employees of any of them, from and against claims, damages, fines, penalties, losses, and expenses, including but not limited to attorney fees, arising in any way out of or resulting from the performance of the work under this contract, but only to the extent such claim, damage, fine, penalty, loss, or expense: (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property, including but not limited to loss of use resulting therefrom and is caused by the negligence, or acts or omissions, of (mechanical, electrical, or plumbing subcontractor), its subcontractors, any of their employees, and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, or (2) as related to such claims, damages, fines, penalties, losses, and expense of or against (general prime contractor), results from or arises out of the negligence of (general prime contractor) or other fault in providing general supervision or oversight of the work of (mechanical, electrical, or plumbing subcontractor) or (3) as related to claims, damages, fines, penalties, losses, and expense against the (Department of Administration or Board of Regents), arises out of the (department's or board's) status as owner of the project or project site.

In addition (mechanical, electrical, or plumbing subcontractor) shall defend, indemnify, and hold harmless (general prime contractor) and its officers, directors, agents, and any others (general prime contractor) is required to indemnify under its contract with the (Department of Administration or Board of Regents), and the employees of any of them, from any liability, including liability resulting from a violation of any applicable safe place act, that (general prime contractor) or the state incurs to any employee of (mechanical, electrical, or plumbing subcontractor) or any third party where the liability arises from a derivative claim from said employee, when the liability arises out of the failure of the (general prime contractor) or the state to properly supervise, inspect, or approve the work or work area of (mechanical, electrical, or plumbing subcontractor), but only to the extent that the liability arises out of the acts or omissions of (mechanical, electrical, or plumbing subcontractor), its employees, or anyone for whom (mechanical, electrical, or plumbing subcontractor) may be liable, or from (mechanical, electrical, or plumbing subcontractor's) breach of its contractual responsibilities or arises out of (general prime contractor's) negligence or other fault in providing general supervision or oversight of (mechanical, electrical, or plumbing subcontractor's) work or arises out of the (Department of Administration's or Board of Regents') status as owner of the project or project site. In claims against (general prime contractor) or the state by an employee of (mechanical, electrical, or plumbing subcontractor) or its subcontractors or anyone for whose acts (mechanical, electrical, or plumbing subcontractor) may be liable, the indemnification obligation of this paragraph is not limited by a limitation on amount or type of damage, compensation, or other benefits payable by or for the (mechanical, electrical, or plumbing subcontractor) or its subcontractors under workers' compensation act.

Except as identified above, the obligations of (mechanical, electrical, or plumbing subcontractor) under this indemnification do not extend to the liability of (general prime contractor) and its agents or employees arising out of (1) preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; (2) the giving of or failure to give directions or instructions by the (general prime contractor) or the (Department of Administration or Board of Regents) or their agents or employees provided the giving or failure to give is the cause of the injury or damage; or (3) the acts or omissions of other subcontractors.

**Retainage.** Retainage shall occur and be in amounts and on a schedule equal to that in the contract between (general prime contractor) and the (Department of Administration or Board of Regents).

(b) A contract entered into under sub. (14) (e) between a general prime contractor and a mechanical, electrical, or plumbing subcontractor must include a scope of work clause that is identical to the scope of work clause on which the mechanical, electrical, or plumbing subcontractor bid under sub. (13).

(c) 1. Except as provided in subd. 2., a general prime contractor and a mechanical, electrical, or plumbing subcontractor may not enter any agreement other than the contract entered into under sub. (14) (e) if the agreement is in connection with bids submitted under sub. (13) or (14) that would alter or affect the scope or price of the contract entered into under sub. (13) or (14) (e).

2. The prohibition under subd. 1. does not apply to change orders by the department or the Board of Regents that result in changes to the plans or specifications or to back charges allowed by the contract under sub. (13).

(d) The general prime contractor shall base its project schedule on the schedule in the specifications or bid instructions under sub. (2) (a) unless otherwise agreed to by the mechanical, electrical, or plumbing subcontractor.

**(15)** The department shall promulgate rules to implement the advertising and award of contracts.

**(16)** (a) This section does not apply to contracts between the state and federal government or any agency thereof, or with any political subdivision of the state. Subject to the approval of the governor, the requirements of this section may be waived in emergency situations involving the public health, welfare or safety or with respect to contracting with public utilities, but only when any

such waiver is deemed by the governor to be in the best interests of the state.

(b) 1. In this paragraph, "agency" has the meaning given in s. 16.70 (1e).

2. In emergency situations, the governor may approve repairs and construction of a building, structure, or facility in lieu of building commission approval under s. 13.48 (10), and for such purposes, may authorize the expenditure of up to $500,000 from the state building trust fund or from other available moneys appropriated to an agency derived from any revenue source. The governor may delegate to the secretary the authority to grant approvals under this subdivision. The governor shall report any such authorization to the building commission at its next regular meeting following the authorization. In this subdivision, "emergency" means any natural or human−caused situation that results in or may result in substantial injury or harm to the population or substantial damage to or loss of property.

**(17)** This section does not apply to any project on which the work is to be performed by inmates or patients in institutions under the jurisdiction of the department of corrections or the department of health services working under the supervision or with the assistance of state employees.

**(18)** This section shall not apply to restoration or reconstruction of the state capitol building, historic structures at the old world Wisconsin site and at Heritage Hill state park when the department determines that a waiver of this section would serve the best interests of this state.

**(19)** (a) As the work progresses under any contract for construction of a project the department, from time to time, shall grant to the contractor an estimate of the amount and proportionate value of the work properly completed, which shall entitle the contractor to receive the amount, less the retainage, from the proper fund. The retainage shall be an amount equal to not more than 5 percent of the estimate until 50 percent of the work has been completed. At 50 percent completion, no additional amounts shall be retained, and partial payments shall be made in full to the contractor unless the department certifies that the job is not proceeding satisfactorily. At 50 percent completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10 percent of the value of the work completed. Upon substantial completion of the work, any amount retained shall be paid to the contractor, less the value of any required corrective work or uncompleted work. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by contractor and delivered to the work or properly stored and suitable for incorporation in the work embraced in the contract.

(b) As the work progresses under any subcontract under sub. (14) (e) for construction of a project, the general prime contractor shall, upon request of a subcontractor, pay to the subcontractor an amount equal to the proportionate value of the subcontractor's work properly completed, less retainage. The retainage shall be an amount equal to not more than 5 percent of the subcontractor's work completed until 50 percent of the subcontractor's work has been completed. At 50 percent completion, no additional amounts may be retained, and partial payments shall be made in full to the subcontractor unless the department or the Board of Regents certifies that the subcontractor's work is not proceeding satisfactorily. At 50 percent completion or any time thereafter when the progress of the subcontractor's work is not satisfactory, additional amounts may be retained but the total retainage may not be more than 10 percent of the value of the work completed. Upon substantial completion of the subcontractor's work, any amount retained shall be paid to the subcontractor, less the value of any required corrective work or uncompleted work. All payments the general prime contractor makes under this paragraph shall be within 7 calendar days after the date on which the general prime contractor receives payment from the department or board.

(c) This subsection does not apply to contracts awarded under s. 16.858.

**(20)** This section does not apply to construction work performed by University of Wisconsin System students when the construction work performed is a part of a curriculum and where the work is course−related for the student involved. Prior approval of the building commission must be obtained for all construction projects to be performed by University of Wisconsin System students, except projects specified in s. 13.48 (10) (c).

**(21)** This section does not apply to contracts by the department of natural resources for construction work related to hazardous substance spill response under s. 292.11 or environmental repair under s. 292.31.

**(22)** The provisions of this section, except sub. (10m), do not apply to construction work for any project that does not require the prior approval of the building commission under s. 13.48 (10) (a) if the project is constructed in accordance with policies and procedures prescribed by the building commission under s. 13.48 (29). If the estimated construction cost of any project, other than a project exempted under sub. (12m) or (24), is at least $50,000, and the building commission elects to utilize the procedures prescribed under s. 13.48 (29) to construct the project, the department shall provide adequate public notice of the project and the procedures to be utilized to construct the project on a publicly accessible computer site.

**NOTE: The creation of s. 16.855 (24) by 2015 Wis. Act 55 was removed from Act 55 by the governor's partial veto.**

**History:** 1971 c. 125; 1973 c. 47; 1975 c. 39, 199, 390; 1977 c. 418; 1979 c. 34; 1981 c. 20; 1983 a. 27 ss. 104g to 105, 2202 (1); 1983 a. 390 s. 6; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27, 292; 1989 a. 31; 1991 a. 39, 316; 1995 a. 27 ss. 400p, 9126 (19); 1995 a. 227; 1997 a. 27, 306; 1999 a. 150 s. 672; 1999 a. 197; 2001 a. 103; 2003 a. 33, 157; 2005 a. 141, 391; 2007 a. 20 s. 9121 (6) (a); 2009 a. 299; 2011 a. 32; 2011 a. 260 s. 80; 2013 a. 20, 192; 2015 a. 55.

**Cross−reference:** See also chs. Adm 21 and 24, Wis. adm. code.

Under subs. (2) (a) 2. and (14), 1979 stats., the department has authority to create a division of work not limited to traditional trade practices, which may include work divisions other than the four enumerated in the statute if the new division involves a specialized area of construction, e.g., elevator work that is commonly designated a division, although it involves the electrical trade. Breiby v. Dept. of Administration, 55 Wis. 2d 16, 197 N.W.2d 737 (1972).

The preference for Wisconsin businesses under ss. 16.75 (1) (a) and 16.855 (1) operates only in case of a tie bid. 74 Atty. Gen. 47.

## 16.856 Prevailing wage. (1) DEFINITIONS. In this section:

(a) "Bona fide economic benefit" means an economic benefit for which an employer makes irrevocable contributions to a trust or fund created under 29 USC 186 (c) or to any other bona fide plan, trust, program, or fund no less often than quarterly or, if an employer makes annual contributions to such a bona fide plan, trust, program, or fund, for which the employer irrevocably escrows moneys at least quarterly based on the employer's expected annual contribution.

(b) "Hourly basic rate of pay" means the hourly wage paid to any employee, excluding any contributions or payments for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefits, whether paid directly or indirectly.

(c) "Minor service or maintenance work" means a project of public works that is limited to minor crack filling, chip or slurry sealing, or other minor pavement patching, not including overlays, that has a projected life span of no longer than 5 years cleaning of drainage or sewer ditches or structures; or any other limited, minor work on public facilities or equipment that is routinely performed to prevent breakdown or deterioration.

(d) "Multiple−trade project of public works" means a project of public works in which no single trade accounts for 85 percent or more of the total labor cost of the project.

(e) "Prevailing hours of labor" for any trade or occupation in any area means 10 hours per day and 40 hours per week and may not include any hours worked on a Saturday or Sunday or on any of the following holidays:

1. January 1.

2. The last Monday in May.

3. July 4.

4. The first Monday in September.

5. The 4th Thursday in November.

6. December 25.

7. The day before if January 1, July 4 or December 25 falls on a Saturday.

8. The day following if January 1, July 4 or December 25 falls on a Sunday.

(f) "Prevailing wage rate" means the applicable prevailing wage rate for an area, as determined by the U.S. department of labor under 40 USC 3142.

(g) "Single−trade project of public works" means a project of public works in which a single trade accounts for 85 percent or more of the total labor cost of the project.

(h) "State agency" means any office, department, independent agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts. "State agency" also includes the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, and the Wisconsin Aerospace Authority.

(i) "Supply and installation contract" means a contract under which the material is installed by the supplier, the material is installed by means of simple fasteners or connectors such as screws or nuts and bolts and no other work is performed on the site of the project of public works, and the total labor cost to install the material does not exceed 20 percent of the total cost of the contract.

(j) "Truck driver" includes an owner−operator of a truck.

**(1m)** APPLICABILITY. Subject to sub. (3g), this section applies to any project of public works erected, constructed, repaired, remodeled, or demolished for the state or a state agency, including all of the following:

(a) A project erected, constructed, repaired, remodeled, or demolished by one state agency for another state agency under any contract or under any statute specifically authorizing cooperation between state agencies.

(b) A project in which the completed facility is leased, purchased, lease purchased, or otherwise acquired by, or dedicated to, the state in lieu of the state or a state agency contracting for the erection, construction, repair, remodeling, or demolition of the facility.

(c) A "sanitary sewer" or water main project in which the completed sanitary sewer or water main is acquired by, or dedicated to, the state for ownership or maintenance by the state.

**(2)** PREVAILING WAGE RATES AND HOURS OF LABOR. Any contract made for the erection, construction, remodeling, repairing, or demolition of any project of public works to which the state or any state agency is a party shall contain a stipulation that no person performing the work described in sub. (2m) may be permitted to work a greater number of hours per day or per week than the prevailing hours of labor, except that any such person may be permitted or required to work more than such prevailing hours of labor per day and per week if he or she is paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times his or her hourly basic rate of pay; nor may he or she be paid less than the prevailing wage rate in the same or most similar trade or occupation in the area in which the project of public works is situated. A reference to the prevailing wage rates and the prevailing hours of labor shall be published in the notice issued for the purpose of securing bids for the project. If any contract or subcontract for a project of public works that is subject to this section is entered into, the prevailing wage rates and the prevailing hours of labor shall be physically incorporated into and made a part of the contract or subcontract, except that for a minor subcontract, as determined by the department, the department shall prescribe by rule the method of notifying the minor subcontractor of the prevailing wage rates and prevailing hours of labor applicable to the minor subcontract. The prevailing wage rates and prevailing hours of labor applicable to a contract or subcontract may not be changed during the time that the contract or subcontract is in force.

**(2m)** COVERED EMPLOYEES. (a) Subject to par. (b), all of the following employees shall be paid the prevailing wage rate and may not be permitted to work a greater number of hours per day or per week than the prevailing hours of labor, unless they are paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:

1. All laborers, workers, mechanics, and truck drivers employed on the site of a project of public works that is subject to this section.

2. All laborers, workers, mechanics, and truck drivers employed in the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of a project of public works that is subject to this section or from a facility dedicated exclusively, or nearly so, to a project of public works that is subject to this section by a contractor, subcontractor, agent, or other person performing any work on the site of the project.

(b) A laborer, worker, mechanic, or truck driver who is employed to process, manufacture, pick up, or deliver materials or products from a commercial establishment that has a fixed place of business from which the establishment supplies processed or manufactured materials or products or from a facility that is not dedicated exclusively, or nearly so, to a project of public works that is subject to this section, including any of the following, is not entitled to receive the prevailing wage rate or to receive at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor:

1. A laborer, worker, mechanic, or truck driver who is employed to go to the source of mineral aggregate such as sand, gravel, or stone and deliver that mineral aggregate to the site of a project of public works that is subject to this section.

2. A laborer, worker, mechanic, or truck driver who is employed to go to the site of a project that is subject to this section, pick up excavated material or spoil from the site of the project of public works, and transport that excavated material or spoil away from the site of the project.

(c) A truck driver who is an owner−operator of a truck shall be paid separately for his or her work and for the use of his or her truck.

**(3g)** NONAPPLICABILITY. This section does not apply to any of the following:

(a) A single−trade project of public works for which the estimated project cost of completion is less than $48,000 or a multiple−trade project of public works for which the estimated project cost of completion is less than $100,000.

(b) Work performed on a project of public works for which the state or the state agency contracting for the project is not required to compensate any contractor, subcontractor, contractor's or subcontractor's agent, or individual for performing the work.

(c) Minor service or maintenance work, warranty work, or work under a supply and installation contract.

(f) A public highway, street, or bridge project.

(g) A project of public works involving the erection, construction, repair, remodeling, or demolition of a residential property containing 2 dwelling units or less.

(h) A road, street, bridge, sanitary sewer, or water main project that is a part of a development in which not less than 90 percent of the lots contain or will contain 2 dwelling units or less, as determined by the local governmental unit at the time of approval of the development, and that, on completion, is acquired by, or dedicated to, the state for ownership or maintenance by the state.

**(5)** DISCLOSURE. If a person who is not an employee of the department or the contracting state agency or who is not an employee of the department of workforce development conducting an investigation under s. 109.09 contacts an employee per-

forming the work described in sub. (2m) for the purpose of investigating compliance with this section, the person shall provide a written statement to the employee stating that the person is not affiliated with the department, the contracting state agency, or the department of workforce development and disclosing the principal source of funding for the investigation.

**(6m)** LIABILITY AND PENALTIES. (ag) 1. Any contractor, subcontractor, or contractor's or subcontractor's agent who fails to pay the prevailing wage rate or who pays less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor is liable to any affected employee in the amount of his or her unpaid wages or his or her unpaid overtime compensation as provided in subd. 2. or 3., whichever is applicable.

2. If the department determines that a contractor, subcontractor, or contractor's or subcontractor's agent has failed to pay the prevailing wage rate or has paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor, the department shall order the contractor to pay to any affected employee the amount of his or her unpaid wages or his or her unpaid overtime compensation within a period specified by the department in the order.

3. In addition to or in lieu of recovering the liability specified in subd. 1. as provided in subd. 2., any employee for and in behalf of that employee and other employees similarly situated may commence an action to recover that liability in any court of competent jurisdiction. If the court finds that a contractor, subcontractor, or contractor's or subcontractor's agent has failed to pay the prevailing wage rate or has paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor, the court shall order the contractor, subcontractor, or agent to pay to any affected employee the amount of his or her unpaid wages or his or her unpaid overtime compensation.

5. No employee may be a party plaintiff to an action under subd. 3. unless the employee consents in writing to become a party and the consent is filed in the court in which the action is brought. Notwithstanding s. 814.04 (1), the court shall, in addition to any judgment awarded to the plaintiff, allow reasonable attorney fees and costs to be paid by the defendant.

(am) Except as provided in pars. (b) and (d), any contractor, subcontractor or contractor's or subcontractor's agent who violates this section may be fined not more than $200 or imprisoned for not more than 6 months or both. Each day that a violation continues is a separate offense.

(b) Whoever induces any person who seeks to be or is employed on any project of public works that is subject to this section to give up, waive, or return any part of the wages to which the person is entitled under the contract governing the project, or who reduces the hourly basic rate of pay normally paid to a person for work on a project that is not subject to this section during a week in which the person works both on a project of public works that is subject to this section and on a project that is not subject to this section, by threat not to employ, by threat of dismissal from employment, or by any other means is guilty of an offense under s. 946.15 (1).

(c) Any person employed on a project of public works that is subject to this section who knowingly permits a contractor, subcontractor, or contractor's or subcontractor's agent to pay him or her less than the prevailing wage rate set forth in the contract governing the project, who gives up, waives, or returns any part of the compensation to which he or she is entitled under the contract, or who gives up, waives, or returns any part of the compensation to which he or she is normally entitled for work on a project that is not subject to this section during a week in which the person works both on a project of public works that is subject to this section and on a project that is not subject to this section, is guilty of an offense under s. 946.15 (2).

(d) Whoever induces any person who seeks to be or is employed on any project of public works that is subject to this section to permit any part of the wages to which the person is entitled under the contract governing the project to be deducted from the person's pay is guilty of an offense under s. 946.15 (3), unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 3142.

(e) Any person employed on a project of public works that is subject to this section who knowingly permits any part of the wages to which he or she is entitled under the contract governing the project to be deducted from his or her pay is guilty of an offense under s. 946.15 (4), unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 3142.

**(7)** RULES; ENFORCEMENT. (a) The department shall promulgate any rules that the department determines are necessary to implement and ensure compliance with this section.

(b) If requested by any person performing the work described in sub. (2m), the department shall inspect the payroll records of any contractor, subcontractor, or agent performing work on a project of public works that is subject to this section to ensure compliance with this section.

(c) Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

**History:** 1983 a. 27; 1985 a. 159; 1985 a. 332 ss. 141, 142, 253; 1987 a. 403 s. 256; 1989 a. 228; 1993 a. 112; 1995 a. 27, 215, 225; 1997 a. 35; 1999 a. 70; 1999 a. 150 ss. 628, 672; 1999 a. 167; 2001 a. 16, 30; 2005 a. 335; 2009 a. 28, 276; 2011 a. 32, 259; 2015 a. 55 ss. 380n, 3077bg, 3077c, 3077cp, 3077dp to 3077f; Stats. 2015 s. 16.856.

**NOTE: For annotations relating to the prevailing wage law as it existed prior to 2015 Wis. Act 55, see s. 66.0903.**

**16.858 Energy conservation audits and construction projects. (1)** The department may contract with a qualified contractor for an energy conservation audit to be performed at any state−owned building, structure or facility. Under the contract, the contractor shall prepare a report containing a description of the physical modifications to be performed to the building, structure or facility that are required to effect specific future energy savings within a specified period and a determination of the minimum savings in energy usage that will be realized by the state from making these modifications within that period. After review of the audit report and subject to approval under s. 13.48 (10), where required, the department may contract with the contractor for construction work to be performed at the building, structure or facility for the purpose of realizing potential savings of future energy costs identified in the audit if, in the judgment of the department, the anticipated savings to the state after completion of the work will enable recovery of the costs of the work within a reasonable period of time.

**(2)** (a) A contract under sub. (1) may provide for the construction work to be financed by the state or by the contractor. The contract shall provide for the state to pay a stated amount, which shall include any financing costs incurred by the contractor. The stated amount may not exceed the minimum savings determined under the audit to be realized by the state within the period specified in the audit. The state shall make payments under the contract as the savings identified in the audit are realized by the state, in the amounts actually realized, but not to exceed the lesser of the stated amount or the actual amount of the savings realized by the state within the period specified in the audit. If the department provides financing for construction work, the department may finance any portion of the cost of the work under a master lease entered into as provided under s. 16.76 (4). If the department provides financing for the construction work and the stated amount to be paid by the state under the contract is greater than the amount of the savings realized by the state within the period specified in the audit under sub. (1), the contract shall require the contractor to remit the difference to the department.

(b) The department shall charge the cost of payments made by the state to the contractor to the applicable appropriation for fuel and utility costs at the building, structure or facility where the

work is performed in the amounts equivalent to the savings that accrue to the state under that appropriation from expenditures not made as a result of the construction work, as determined by the department in accordance with the contract. The department may also charge its costs for negotiation, administration and financing of the contract to the same appropriation.

**(3)** Any contract under sub. (1) shall include a provision stating in substance that payments under the contract are contingent upon available appropriations.

**(4)** No later than January 1 of each year, the secretary shall report to the cochairpersons of the joint committee on finance identifying any construction work for which the department has contracted under this section for which final payment has not been made as of the date of the preceding report, together with the actual energy cost savings realized by the state as a result of the contract to date, or the estimated energy cost savings to be realized by the state if the total savings to be realized in the audit under sub. (1) have not yet been realized, the date on which the state made its final payment under the contract or, if the final payment has not been made, the latest date on which the state is obligated to make its final payment under the contract, and any amount that remains payable to the state under the contract.

**History:** 1997 a. 27; 1999 a. 9.

**16.865 Department of administration; statewide risk management coordination.** The department shall:

**(1)** Be responsible for statewide risk management coordination in order to:

(a) Protect the state from losses which are catastrophic in nature and minimize total cost to the state of all activities related to the control of accidental loss.

(b) Place emphasis on the reduction of loss through professional attention to scientific loss control techniques and by motivational incentives, prompt claims payments and other loss prevention measures.

**(2)** Identify and evaluate exposure to loss to the state, its employees or injury to the public by reason of fire or other accidents and fortuitous events at state−owned properties or facilities.

**(3)** Recommend changes in procedures, program conditions or capital improvement for all agencies which would satisfactorily eliminate or reduce the existing exposure.

**(4)** Manage the state employees' worker's compensation program and the statewide self−funded programs to protect the state from losses of and damage to state property and liability and, if retained by the department of workforce development under s. 102.65 (3), process, investigate, and pay claims under ss. 102.44 (1), 102.49, 102.59, and 102.66 as provided in s. 102.65 (3).

**(5)** Arrange appropriate insurance contracts for the transfer of risk of loss on the part of the state or its employees, to the extent such loss cannot reasonably be assumed by the individual agencies or the self−funded programs. The placement of insurance may be by private negotiation rather than competitive bid, if such insurance has a restricted number of interested carriers. The department shall approve all insurance purchases.

**(6)** Train, upgrade and guide appropriate personnel in the agencies in implementation of sound risk management practices.

**(7)** Have the authority to contract for investigative and adjustment services as provided in s. 20.865 (1) (fm) which can be performed more economically or efficiently by such contract.

**(8)** Annually in each fiscal year, allocate as a charge to each agency a proportionate share of the estimated costs attributable to programs administered by the agency to be paid from the appropriation under s. 20.505 (2) (k). The department may charge premiums to agencies to finance costs under this subsection and pay the costs from the appropriation on an actual basis. The department shall deposit all collections under this subsection in the appropriation account under s. 20.505 (2) (k). Costs assessed under this subsection may include judgments, investigative and adjustment fees, data processing and staff support costs, program administration costs, litigation costs, and the cost of insurance contracts under sub. (5). In this subsection, "agency" means an office, department, independent agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, that is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority created in subch. II of ch. 114 or in ch. 231, 232, 233, 234, 237, 238, or 279.

**(9)** Notwithstanding s. 20.001 (3) (c), if the department makes any payment from the appropriation under s. 20.505 (2) (a), lapse to the general fund from the appropriation account under s. 20.505 (2) (k) an amount equal to the payment. The department shall effect the lapse required under this subsection in accordance with a schedule determined by the department, but the total amount of each lapse shall be effected no later than 6 years after the date of the payment to which it relates.

**History:** 1973 c. 333; 1975 c. 81, 189, 422; 1977 c. 29; 1977 c. 196 s. 130 (3); 1979 c. 34, 221; 1981 c. 20; 1985 a. 29; 1987 a. 399; 1989 a. 125; 1991 a. 39; 1993 a. 16; 1995 a. 27; 2001 a. 16; 2003 a. 33; 2005 a. 74, 335; 2007 a. 20, 97; 2009 a. 28; 2011 a. 7, 10, 183, 229; 2013 a. 20, 165.

**16.87 Approval of contracts by secretary and governor; audit. (1)** In this section:

(a) "Construction work" includes all labor and materials used in the framing or assembling of component parts in the erection, installation, enlargement, alteration, repair, moving, conversion, razing, demolition or removal of any appliance, device, equipment, building, structure or facility.

(am) "Disabled veteran−owned business" means a business certified by the department of administration under s. 16.283 (3).

(b) "Environmental consultant services" includes services provided by environmental scientists, engineers and other experts.

(c) "Limited trades work" has the meaning given under s. 16.70 (7).

**(2)** (a) A contract for engineering services or architectural services or a contract involving an expenditure of $10,000 or more for construction work, or $30,000 or more for limited trades work, to be done for or furnished to the state or a department, board, commission, or officer of the state is exempt from the requirements of ss. 16.705 and 16.75.

(b) The department shall attempt to ensure that 5 percent of the total amount expended under this section in each fiscal year is paid to minority businesses, as defined in s. 16.75 (3m) (a) 4.

(c) The department shall attempt to ensure that at least 1 percent of the total amount expended under this section in each fiscal year is paid to disabled veteran−owned businesses.

**(3)** Except as provided in sub. (4), a contract under sub. (2) is not valid or effectual for any purpose until it is endorsed in writing and approved by the secretary or the secretary's designated assistant and, if the contract involves an expenditure over $60,000, approved by the governor. The governor may delegate the authority to approve any contract requiring his or her approval under this subsection that involves an expenditure of less than $150,000 to the secretary or the secretary's designee. Except as provided in sub. (4), no payment or compensation for work done under any contract involving $2,500 or more, except a highway contract, may be made unless the written claim is audited and approved by the secretary or the secretary's designee. Any change order to a contract requiring approval under this subsection requires the prior approval by the secretary or the secretary's designated assistant and, if the change order involves an expenditure over $60,000, the approval of the governor or, if the governor delegates his or her authority to approve contracts under this subsection and the change order involves an expenditure of less than $150,000, the approval of the secretary or the secretary's designee.

**(4)** This section does not apply to contracts by the department of natural resources for environmental consultant services or engineering services for hazardous substance spill response under

s. 292.11 or environmental repair under s. 292.31, or for environmental consultant services to assist in the preparation of an environmental impact statement or to provide preapplication services under s. 23.40.

**(5)** This section does not apply to any project specified in s. 13.48 (10) (c).

**History:** 1973 c. 90; 1975 c. 39, 199; 1977 c. 418; 1979 c. 221 ss. 68, 81, 82; 1983 a. 27; 1983 a. 390 s. 6; 1985 a. 29 s. 3202 (1); 1989 a. 31; 1991 a. 39; 1995 a. 227; 1999 a. 197; 2001 a. 16; 2005 a. 391; 2009 a. 299; 2011 a. 32; 2011 a. 260 s. 80; 2013 a. 192; 2015 a. 55.

**16.875 Setoffs.** All amounts owed by this state under this subchapter are subject to being set off under s. 73.12.

**History:** 1985 a. 29.

**16.88 Charges against projects.** The cost of services furnished pursuant to s. 16.85 (2) to (4), (6) and (7) shall be charged to and paid out of available funds for the respective projects, whenever in the judgment of the secretary the charges are warranted and the cost of the services can be ascertained with reasonable accuracy.

**16.89 Construction and services controlled by this chapter.** No department, independent agency, constitutional office or agent of the state shall employ engineering, architectural or allied services or expend money for construction purposes on behalf of the state, except as provided in this chapter and except that the Board of Regents of the University of Wisconsin System may engage such services for any project specified in s. 13.48 (10) (c).

**History:** 1981 c. 390; 1983 a. 27; 2011 a. 32; 2015 a. 55.

**16.891 Reports on cost of occupancy of state facilities. (1)** In this section:

(a) "Agency" has the meaning given in s. 16.70 (1e).

(b) "Total cost of occupancy" means the cost to operate and maintain the physical plant of a building, structure, or facility, including administrative costs of an agency attributable to operation and maintenance of a building, structure, or facility, together with any debt service costs associated with the building, structure, or facility, computed in the manner prescribed by the department.

**(2)** Except as provided in sub. (4), each agency shall report to the department no later than October 1 of each year concerning the total cost of occupancy of each state−owned building, structure, and facility, excluding public highways and bridges, under the jurisdiction of the agency for the preceding fiscal year. The report shall be made in a format prescribed by the department. Beginning in 2009, if a building, structure, or facility is a part of an institution, the agency having jurisdiction of the institution shall also include in its report the total cost of occupancy of all of the buildings, structures, and facilities within the institution.

**(3)** No later than December 1 of each year, the department shall compile the information received under sub. (2) and transmit a consolidated report to the building commission on the total cost of occupancy of all buildings, structures, and facilities included in the reports filed under sub. (2), itemized for each building, structure, and facility. The report shall include, for each building, structure, or facility, the recommendations of the department concerning the desired total cost of occupancy for that building, structure, or facility.

**(4)** The department may exempt an agency from compliance with the reporting requirement under sub. (2) with respect to any building, structure, or facility that the department determines to have a minimal total cost of occupancy.

**History:** 2005 a. 25.

**16.895 State−owned or operated heating, cooling or power plants. (1)** In this section, "agency" has the meaning given under s. 16.52 (7).

**(2)** The department may:

(a) Prepare all specifications, bid and administer contracts for the purchase of fuels for all state−owned or operated heating, cooling or power plants.

(b) Coordinate the state fuel and utility management program to maximize the economy of operations of the program.

(c) Determine the method of operation of state−owned or operated heating, cooling or power plants, including maintenance standards and policies concerning utilization of alternative fuels and energy conservation.

(d) Assure compliance with federal and state laws, federal regulations and state administrative rules applicable to state−owned or operated heating, cooling or power plants.

(e) Delegate to any agency the department's authority under par. (c) or (d) and approve all expenditures of the agency under par. (c) or (d).

(f) Review and approve rates charged by any agency for the sale of fuel, water, sewage treatment service, electricity, heat or chilled water under s. 16.93, and the rates at which any agency charges its appropriations for fuel, water, sewage treatment service, electricity, heat or chilled water that the agency provides to itself.

(g) Provide for emissions testing, waste product disposal and fuel quality testing at state−owned or operated heating, cooling or power plants, and secure permits that are required for operation of the plants.

(h) Periodically assess to agencies their proportionate cost of the expenses incurred by the department under this subsection and ss. 16.85 (4), 16.90, 16.91 and 16.92 in accordance with a method of apportionment determined by the department.

**History:** 1989 a. 31 ss. 135, 140.

**16.897 Space and water heating systems.** In planning and designing space or water heating systems for new or existing state facilities, the department shall ensure that geothermal technologies are utilized to the greatest extent that is cost−effective and technically feasible.

**History:** 2005 a. 141.

**16.90 Fuel for state heating, cooling or power plants. (1)** In this section, "agency" has the meaning given in s. 16.52 (7).

**(2)** The secretary shall:

(a) Prepare all specifications for contracts for the purchase of fuel for each state−owned or operated heating, cooling or power plant. All such specifications where feasible shall provide for purchase of such fuel on a heating value and quality basis and may provide for an adjustment of the base price of any fuel as a result of changes in production or transportation costs during the term of a contract.

(b) Distribute fuel purchased by the department or any agency to agencies that require it, and reallocate such fuel between agencies in the event of a shortage.

(c) Set standards for storage of fuel by agencies.

(d) Test all fuel purchased for each state−owned or operated heating, cooling or power plant wherein the annual requirement is in excess of 12,500 therms and where purchased on a heating value and quality basis.

(e) Promulgate such rules as the secretary considers necessary, not inconsistent with this section, to promote efficiency, energy conservation and economy in the testing, handling and use of fuel for state−owned or operated heating, cooling or power plants.

**History:** 1989 a. 31, 359.

**16.91 Contracts for fuel. (1)** In this section, "agency" has the meaning given under s. 16.52 (7).

**(2)** No contract for the purchase of fuel for any state−owned or operated heating or heating and power plant wherein the annual requirement is in excess of 12,500 therms is binding unless purchased upon specifications furnished by the secretary. A contract for fuel may be for any term deemed to be in the best interests of

the state, but the term and any provisions for renewal or extension shall be incorporated in the bid specifications and the contract document.

**(3)** Payments for fuel delivered under contracts specified in sub. (2) and for delivery costs shall be made upon vouchers approved by the secretary. Upon being audited and paid, the department shall charge each purchase against the appropriation to the agency which has jurisdiction over the facility at which the fuel is used. The secretary shall report on a quarterly basis to each such agency the total amount of payments charged under this subsection to each of its appropriations and facilities. Approval of the payments by the agency whose appropriation is charged is not required.

**History:** 1979 c. 34; 1989 a. 31.

**16.92 Purchase of fuel, electricity, heat and chilled water. (1)** In this section, "agency" has the meaning given in s. 16.52 (7).

**(2)** Each agency shall utilize the most cost−effective means of procurement of fuel, electricity, heat and chilled water.

**History:** 1989 a. 31.

**16.93 Sale of fuel or utility service. (1)** In this section, "agency" has the meaning given under s. 16.52 (7).

**(2)** Except as provided in sub. (3), any agency, with the approval of the department, may sell fuel, water, sewage treatment service, electricity, heat or chilled water to another agency, a federal agency, a local government or a private entity.

**(3)** Prior to contracting for the sale of any fuel or extending any water, sewage treatment, electrical, heating or chilled water service to a new private entity after August 9, 1989, an agency shall contact each public utility that serves the area in which the private entity is located and that is engaged in the sale of the same fuel or utility service. If a public utility so contacted objects to the proposed sale and commits to provide the fuel or service, the agency shall not contract for the sale.

**History:** 1989 a. 31.

## SUBCHAPTER VI

## STATE PLANNING AND ENERGY

**16.95 Powers and duties.** The department shall, through a system of comprehensive long−range planning, promote the development and the maximum wise use of the energy, natural, and human resources of the state and develop and implement a cost−effective, balanced, reliable, and environmentally responsible energy strategy to promote economic growth. The department shall do all of the following:

**(1)** Collect, analyze, interpret and, in cooperation with the other state agencies, maintain the comprehensive data needed for effective state agency planning and effective review of those plans by the governor and the legislature.

**(2)** Perform research to evaluate and measure alternative objectives and administrative actions.

**(3)** Stimulate and encourage all state agencies to comprehensively plan and advance proposals for their area of state government services, and assist the state agencies to develop a necessary planning capacity.

**(4)** Prepare and maintain plans for those state agencies which do not have an adequate planning capacity, at the request and in cooperation with those agencies.

**(5)** Advise and assist state agencies in their development and maintenance of comprehensive plans, providing them with technical and program information, and advising them of the impact of related plans of other state agencies.

**(6)** Stimulate the consideration and possible use of creative techniques and actions that may better accomplish the objectives of this section.

**(7)** Evaluate the plans of all state agencies, identify both duplication and program gaps in the plans and measure the agency plans with the state goals enacted by the governor and the legislature.

**(8)** Advise and assist the governor and the legislature in establishing long−range development policies and programs in considering state agency plans with regard to those policies and programs.

**(9)** Develop and submit to the governor's office and to the appropriate standing committees of the legislature, as determined by the speaker of the assembly and the president of the senate on or before September 1 of each even−numbered year a 5−year and 10−year plan for the resolution of the energy needs of low−income households. The department shall consult with the public service commission, the department of health services and other agencies and groups related to low−income energy assistance. The department shall include in each plan, without limitation due to enumeration, items such as target populations, income eligibility, goals and funding.

**(10)** Assist in implementing agency plans in accordance with policies and programs established by the governor and the legislature.

**(11)** Administer federal planning grants for state planning, when so designated by the governor pursuant to s. 16.54. The department may contract with other state agencies for the preparation of all or part of a facet of the state plan which is financed in whole or in part by federal planning grants.

**(12)** Prepare and maintain contingency plans for responding to critical energy shortages so that when the shortages occur they can be dealt with quickly and effectively.

**(13)** Implement the priorities under s. 1.12 (4) in designing the department's energy programs and in awarding grants or loans for energy projects.

**(14)** By rule, establish a standardized method for measuring the energy efficiency of the state's economy to be used in preparing the report under sub. (15). In establishing the methodology, the department shall consider methodologies currently in use for this purpose, including the methodology used by the world bank.

**(15)** Before April 1 annually, submit a report to the legislature under s. 13.172 (3) regarding progress made in meeting the energy efficiency goal under s. 1.12 (3) (a).

**(16)** Require public utilities to provide the department with energy billing and use data regarding public schools, if the department determines that the data would facilitate any effort by the department to administer or provide energy assistance for public schools, including any effort to direct energy assistance to public schools with the highest energy costs.

**History:** 1977 c. 29; 1985 a. 29; 1993 a. 414; 1995 a. 27 s. 9126 (19); 2001 a. 16; 2007 a. 20 s. 9121 (6) (a); 2011 a. 32.

**16.953 Energy cost reduction plans.** No later than July 1 of each even−numbered year, each agency, as defined in s. 16.75 (12) (a) 1., shall submit a plan to the department, the joint committee on finance, and the standing committee of each house of the legislature having jurisdiction over energy, for reduction of the cost of energy used by the agency. The plan shall include all system and equipment upgrades or installations that are estimated to result in energy cost savings equal to the cost of the upgrade or installation over the anticipated life of the system or equipment. The plan shall also identify potential means of financing the upgrades and installations other than reliance on appropriations of general purpose revenues. The department of administration shall consider in its plan the means of financing allowed under s. 16.858.

**History:** 2005 a. 141.

**16.955 Energy administration. (1)** INFORMATION. If the governor determines that a disruption of energy supplies poses a serious risk to the economic well−being, health or welfare of the citizens of this state, the governor may issue an order declaring an

energy alert. Upon declaration of an energy alert by the governor, the department may issue general or special orders, as defined in s. 101.01 (7), or promulgate emergency rules under ch. 227 to compel disclosure of information required for purposes of this section. Any person, or agent of the person, who produces, imports or sells, coal or other forms of fuel, other than electricity, natural gas or wood, who is subject to an emergency rule or general or special order of the department within reasonable time limits specified in the order shall file or furnish such reports, information, data, copies of extracts of originals as the department deems necessary relating to existing and future energy supplies, including but not limited to record of sales in years for 1970 and thereafter, storage capacity, supplies on hand and anticipated supplies, and anticipated demand. To the extent that the reports and data requested by the department are presently available from other state or federal agencies, the department shall coordinate its data reporting requirements with the agencies to avoid duplication of reporting.

**(2)** INFORMATION TO BE CONFIDENTIAL. All information furnished under sub. (1) shall be considered confidential and may be compiled or published only for purposes of general statistical comparison. The information may be disclosed to agencies of the state or of the federal government, under the same or similar rules of confidentiality.

**(3)** PENALTIES AND JUDICIAL RELIEF. (a) Any person, or agent of a person, who produces, imports or sells, coal or other forms of fuel, other than electricity, natural gas or wood, who fails to provide information requested by the department at the time and in the manner specified by the department shall forfeit an amount not to exceed $1,000. Each day the violation of this section continues from the day notice has been received constitutes a separate offense.

(b) Upon request of the department, the attorney general or the district attorney of the proper county may aid in any investigation, enforce any request of the department for information under this section or seek forfeitures for violations of this section.

(c) Upon request of the department, the attorney general or the district attorney of the proper county may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this section.

(d) The remedies under this section shall not be exclusive.

**(4)** HEARINGS; EVIDENCE; WITNESS FEES. (a) The department or any of its authorized agents may, in relation to any matter arising under this section, conduct hearings, administer oaths, issue subpoenas and take testimony.

(b) The witnesses subpoenaed by the department or its agent and officers who serve subpoenas shall be entitled to the fees allowed in courts of record. The fees shall be audited and paid by the state in the same manner as other expenses of the department are audited and paid. No witness subpoenaed at the instance of any party other than the department is entitled to payment of fees by the state, unless the department certifies that the testimony of the witness was material.

(c) Any person who unlawfully fails to attend as a witness or refuses to testify may be compelled to do so as provided in s. 885.12.

(d) A record of all hearings shall be kept by the department. All hearings shall be public.

**History:** 1977 c. 29; 1979 c. 19; 1983 a. 189 s. 329 (4); 1985 a. 236; 1989 a. 359; 1995 a. 27.

**Cross−reference:** See also ch. Adm 40, Wis. adm. code.

**16.956 Diesel truck idling reduction grants. (1)** DEFINITIONS. In this section:

(a) "Common motor carrier" has the meaning given in s. 194.01 (1).

(b) "Contract motor carrier" has the meaning given in s. 194.01 (2).

(c) "Idling reduction unit" means a device that is installed on a diesel truck to reduce the long−duration idling of the truck by providing heat, air conditioning, or electricity to the truck while the truck is stationary and the main drive engine of the truck is not operating.

(d) "Post−1998 diesel truck engine" means a heavy−duty highway diesel engine that complies with the air pollutant emission standards promulgated by the federal environmental protection agency under 42 USC 7521 for engine model year 1998 or a later engine model year.

(e) "Private motor carrier" has the meaning given in s. 194.01 (11).

(f) "Truck tractor" has the meaning given in s. 340.01 (73).

**(2)** AUTHORITY. Beginning on July 1, 2006, and ending on June 30, 2020, the department may award a grant to an eligible applicant for the purchase and field testing of one or more idling reduction units as provided in subs. (3) and (4).

**(3)** ELIGIBLE APPLICANTS. An applicant is eligible for a grant under this section only if all of the following apply:

(a) The applicant is a common motor carrier, contract motor carrier, or private motor carrier that transports freight.

(b) The applicant is headquartered in this state.

(c) The applicant pays 50 percent of the eligible costs for each idling reduction unit covered by a grant under this section without the use of grants, loans, or other financial assistance from this state or from a local governmental unit in this state.

(d) The applicant agrees to collect information relating to the operation and performance of each idling reduction unit covered by a grant under this section, as required by the department, and to report that information to the department.

**(4)** GRANTS. (a) Except as provided in par. (b), the costs that an applicant has incurred or will incur to purchase and install an idling reduction unit on a truck tractor that is owned and operated by the applicant and that has a post−1998 diesel truck engine are eligible costs under this section if the use of the idling reduction unit will result, in the aggregate, in a decrease in the emissions of one or more air contaminants, as defined in s. 285.01 (1), from the truck tractor on which the idling reduction unit is installed or in a decrease in the use of energy by the truck tractor on which the idling reduction unit is installed.

(b) The following costs are not eligible costs:

1. The cost of shipping an idling reduction unit from the manufacturer to the facility where the idling reduction unit will be installed on the truck tractor.

2. The cost of operating an idling reduction unit.

3. The cost of maintaining an idling reduction unit.

(cm) Subject to par. (d), the department may make grants under this section from July 1, 2009 to June 30, 2020, of 50 percent of the eligible costs for an idling reduction unit installed on a truck tractor, unless the department has previously awarded a grant under this section for an idling reduction unit installed on the truck tractor.

(d) In any fiscal year, the department may not pay to any one applicant more than 20 percent of the amount appropriated under s. 20.505 (1) (sa) for the fiscal year.

(e) The department may pay a grant over more than one fiscal year, subject to the availability of funds and to par. (d).

**(5)** INFORMATION. The department shall collect information from recipients of grants under this section relating to the operation and performance of idling reduction units. The department shall summarize the information collected and make it available to common motor carriers, contract motor carriers, and private motor carriers in an accessible and cost−effective manner, such as on department's Internet site.

**(5m)** RULES. The department shall promulgate rules for the administration of the program under this section.

**(6)** SUNSET. Subsections (2) to (4) do not apply after December 31, 2021.

**History:** 2005 a. 25; 2007 a. 20; 2009 a. 28; 2011 a. 32 ss. 3335 to 3338; Stats. 2011 s. 101.45; 2013 a. 20 s. 1710; Stats. 2013 s. 16.956; 2013 a. 173; 2015 a. 55.

**Cross−reference:** See also ch. Adm 94, Wis. adm. code.

**16.957 Low−income assistance. (1)** DEFINITIONS. In this section:

(bm) "Commission" means the public service commission.

(c) "Commitment to community program" means a program by or on behalf of a municipal utility or retail electric cooperative for low−income assistance.

(f) "Electric provider" means an electric utility or retail electric cooperative.

(g) "Electric utility" means a public utility that owns or operates a retail electric distribution system.

(gr) "Federal assistance" means, for a fiscal year, all moneys received from the federal government under 42 USC 6861 to 6873 and 42 USC 8621 to 8629 in the fiscal year.

(i) "Fiscal year" has the meaning given in s. 655.001 (6).

(k) "Local unit of government" means the governing body of any county, city, town, village or county utility district or the elected tribal governing body of a federally recognized American Indian tribe or band.

(L) "Low−income assistance" means assistance to low−income households for weatherization and other energy conservation services, payment of energy bills or early identification or prevention of energy crises.

(m) "Low−income household" means any individual or group of individuals in this state who are living together as one economic unit and for whom residential electricity is customarily purchased in common or who make undesignated payments for electricity in the form of rent, and whose household income is not more than 60 percent of the statewide median household income.

(n) "Low−income need" means the amount obtained by subtracting from the total low−income energy bills in a fiscal year the product of 2.2 percent of the estimated average annual income of low−income households in this state in that fiscal year multiplied by the estimated number of low−income households in this state in that fiscal year.

(o) "Low−income need percentage" means the percentage that results from dividing the sum of the following by the amount of low−income need in fiscal year 1998−99:

1. The federal assistance in fiscal year 1997−98.

1m. The amount of the portion of the public benefits fee for fiscal year 1999−2000 that is specified in s. 16.957 (4) (c) 1., 1999 stats.

2. The total amount expended by utilities under s. 196.374, 2003 stats., related to low−income assistance.

3. Fifty percent of the amount of public benefits fees that municipal utilities and retail electric cooperatives were required to charge under s. 16.957 (5) (a), 1999 stats., in fiscal year 1999−2000.

(p) "Low−income need target" means the product of the low−income need percentage multiplied by low−income need in a fiscal year.

(q) "Municipal utility" means an electric utility that is owned wholly by a municipality and that owns a retail distribution system.

(qm) "Public utility" has the meaning given in s. 196.01 (5).

(s) "Retail capacity" means the total amount of electricity that an electric provider is capable of delivering to its retail customers or members and that is supplied by electric generating facilities owned or operated by the electric provider or any other person. "Retail capacity" does not include any electricity that is not used to satisfy the electric provider's retail load obligations.

(t) "Retail electric cooperative" means a cooperative association that is organized under ch. 185 for the purpose of providing electricity at retail to its members only and that owns or operates a retail electric distribution system.

(u) "Total low−income energy bills" means the total estimated amount that all low−income households are billed for residential electricity, natural gas and heating fuel in a fiscal year.

(v) "Wholesale electric cooperative" means a cooperative association that is organized under ch. 185 for the purpose of providing electricity at wholesale to its members only.

(w) "Wholesale supplier" means a wholesale electric cooperative or a municipal electric company, as defined in s. 66.0825 (3) (d), that supplies electricity at wholesale to a municipal utility or retail electric cooperative.

(x) "Wholesale supply percentage" means the percentage of the electricity sold by a wholesale supplier that is purchased by a municipal utility or retail electric cooperative.

**(2)** DEPARTMENT DUTIES. The department shall do all of the following:

(a) *Low−income programs.* After holding a hearing, establish programs to be administered by the department for awarding grants from the appropriation under s. 20.505 (3) (r) to provide low−income assistance. In each fiscal year, the amount awarded under this paragraph shall be sufficient to ensure that an amount equal to 50 percent of the sum of the following is allocated for weatherization and other energy conservation services:

2. All moneys spent in a fiscal year for low−income programs established under s. 196.374, 2003 stats.

3. The moneys collected in low−income assistance fees under sub. (4) (a).

4. The moneys collected in low−income assistance fees under sub. (5) (a).

(c) *Rules.* Promulgate rules establishing all of the following:

1. Eligibility requirements for low−income assistance under programs established under par. (a). The rules shall prohibit a person who receives low−income assistance from a municipal utility or retail electric cooperative under a program specified in sub. (5) (b) 1. from receiving low−income assistance under programs established under par. (a).

2. Requirements and procedures for applications for grants awarded under programs established under par. (a).

5. A method for estimating total low−income energy bills, average annual income of low−income households and the number of low−income households in a fiscal year for the purpose of determining the amount of low−income need in the fiscal year.

(d) *Other duties.* 1. For each fiscal year, determine the low−income need target for that fiscal year.

3. Deposit all moneys received under sub. (4) (a) or (5) (b) 2. in the utility public benefits fund.

4. Provide for an annual independent audit and submit an annual report to the legislature under s. 13.172 (2) that describes each of the following:

a. The expenses of the department, other state agencies, and grant recipients in administering or participating in the programs under par. (a).

b. The effectiveness of the programs under par. (a) in providing assistance to low−income individuals.

d. Any other issue identified by the department, governor, speaker of the assembly or majority leader of the senate.

**(3)** CONTRACTS. The department shall, on the basis of competitive bids, contract with community action agencies described in s. 49.265 (2) (a) 1., nonstock, nonprofit corporations organized under ch. 181, or local units of government to provide services under the programs established under sub. (2) (a).

**(4)** ELECTRIC UTILITIES. (a) *Requirement to charge low−income assistance fees.* Each electric utility, except for a municipal utility, shall charge each customer a low−income assistance fee in an amount established in rules promulgated by the department under par. (b). An electric utility, except for a municipal util-

ity, shall collect and pay the fees to the department in accordance with the rules promulgated under par. (b). The low−income assistance fees collected by an electric utility shall be considered trust funds of the department and not income of the electric utility.

(am) *Electric bills.* An electric utility shall show the low−income assistance fee as a separate line in a customer's bill, identified as the "state low−income assistance fee," and shall provide the customer with an annual statement that identifies the annual charges for low−income assistance fees and describes the programs for which fees are used.

(b) *Rules.* The department shall promulgate rules that establish the amount of a low−income assistance fee under par. (a). Fees established in rules under this paragraph may vary by class of customer, but shall be uniform within each class, and shall satisfy each of the following:

1. The fees may not be based on the kilowatt−hour consumption of electricity by customers.

2. Seventy percent of the total amount of fees charged by an electric provider may be charged to residential customers and 30 percent of the total may be charged to nonresidential customers.

3. The fees shall allow an electric provider to recover the reasonable and prudent expenses incurred by the electric provider in complying with this section.

(c) *Amount of low−income assistance fees.* A fee established in rules promulgated under par. (b) shall satisfy each of the following:

1. 'Low−income funding from fee.' In each fiscal year, the low−income assistance fee shall be an amount that, when added to the sum of the following shall equal the low−income need target for that fiscal year determined by the department under sub. (2) (d) 1.:

a. The estimated low−income assistance fees charged by municipal utilities and retail electric cooperatives under sub. (5) (a) for that fiscal year.

b. The federal assistance for that fiscal year.

c. The total amount spent on programs by utilities under s. 196.374 (3), 2003 stats., for that fiscal year for low−income assistance.

3. 'Limitation on low−income assistance fees.' In any month, the low−income assistance fee may not exceed 3 percent of the total of every other charge for which the customer is billed for that month or $750, whichever is less.

**(5)** MUNICIPAL UTILITIES AND RETAIL ELECTRIC COOPERATIVES. (a) *Requirement to charge low−income assistance fees.* Each retail electric cooperative and municipal utility shall charge a monthly low−income assistance fee to each customer or member in an amount that is sufficient for the retail electric cooperative or municipal utility to collect an annual average of $8 per meter. A retail electric cooperative or municipal utility may determine the amount that a particular class of customers or members is required to pay under this paragraph and may charge different fees to different classes of customers or members.

(am) *Low−income assistance fee restriction.* Notwithstanding par. (a), in any month, the low−income assistance fee may not exceed 1.5 percent of the total of every other charge for which the member or customer is billed for that month or $375, whichever is less.

(b) *Commitment to community programs.* 1. Except as provided in subd. 2., each retail electric cooperative and municipal utility shall spend on commitment to community programs the fees that the cooperative or utility charges under par. (a).

2. No later than October 1, 2007, and no later than every 3rd year after that date, each municipal utility or retail electric cooperative shall notify the department whether the utility or cooperative has elected to contribute the fees that the utility or cooperative charges under par. (a) to the programs established under sub. (2) (a) in each year of the 3−year period for which the utility or cooperative has made the election. If a municipal utility or retail electric cooperative elects to contribute to the programs established under sub. (2) (a), the utility or cooperative shall pay the low−income assistance fees that the utility or cooperative collects under par. (a) to the department in each year of the 3−year period for which the utility or cooperative has made the election.

(e) *Wholesale supplier credit.* If a wholesale supplier has established a commitment to community program, a municipal utility or retail electric cooperative that is a customer or member of the wholesale supplier may include an amount equal to the product of the municipal utility's or retail electric cooperative's wholesale supply percentage and the amount that the wholesale supplier has spent on the commitment to community program in a year in calculating the amount that the municipal utility or retail electric cooperative has spent on commitment to community programs in that year under par. (b) 1.

(f) *Joint programs.* Municipal utilities or retail electric cooperatives may establish joint commitment to community programs, except that each municipal utility or retail electric cooperative that participates in a joint program is required to comply with the spending requirements under par. (b) 1.

(g) *Reports.* 1. Annually, each municipal utility and retail electric cooperative that spends the low−income assistance fees that the utility or cooperative charges under par. (a) on commitment to community programs under par. (b) 1. shall provide for an independent audit of its programs and submit a report to the department that describes each of the following:

a. An accounting of low−income assistance fees charged to customers or members under par. (a) in the year and expenditures on commitment to community programs under par. (b) 1., including any amounts included in the municipal utility's or retail electric cooperative's calculations under par. (e).

b. A description of commitment to community programs established by the municipal utility or retail electric cooperative in the year.

2. The department shall require that municipal utilities and retail electric cooperatives file reports under subd. 1. electronically, in a format that allows for tabulation, comparison, and other analysis of the reports. The department shall maintain reports filed under subd. 1. for at least 6 years.

**History:** 1999 a. 9; 2001 a. 16, 30; 2003 a. 33; 2005 a. 141; 2007 a. 20; 2009 a. 11, 28; 2011 a. 32; 2013 a. 20; 2015 a. 55.

**Cross−reference:** See also chs. Adm 43 and 45, Wis. adm. code.

**16.958 Air quality improvement program. (1)** In this section:

(a) "Eligible electric provider" means a generator public utility or a generator electric cooperative that provides electric service to customers or members in the midcontinent area of this state.

(b) "Generator electric cooperative" means an electric cooperative, as defined in s. 76.48 (1g) (c), that generates electricity.

(c) "Generator public utility" means a public utility, as defined in s. 196.01 (5), that generates electricity.

(d) "Initial compliance date" means the date specified in a notice by the department of natural resources under s. 285.48 (2) by which electric generating facilities in the midcontinent area of this state are required to comply with initial nitrogen oxide emission reduction requirements.

(e) "Midcontinent area" means the geographic area served by the Mid−Continent Area Power Pool reliability council of the North American Electric Reliability Council.

**(2)** If the department of natural resources makes a notification to the department of administration under s. 285.48 (2), the department of administration shall do each of the following:

(a) In each fiscal year of the 10−year period that commences on July 1 of the fiscal year ending before the initial compliance date, transfer $2,500,000, or the lesser amount specified in a notice under s. 285.48 (3) (d) 4., from the utility public benefits fund to the air quality improvement fund.

(b) From the air quality improvement fund, award grants to eligible electric providers to be used for the purpose of complying with requirements under state or federal law to reduce nitrogen oxide emissions in the midcontinent area of this state pursuant to a state implementation plan. An eligible electric provider that is a public utility may receive no more than $500,000 per year in grants under this paragraph.

(c) Promulgate rules for awarding grants under par. (b). The rules shall require an applicant for a grant to identify the reduction in nitrogen oxide emissions that the applicant is capable of achieving with the grant.

**(3)** An eligible electric provider that is awarded a grant under sub. (2) (b) may assign the grant to a 3rd party if the 3rd party uses the grant for the purpose of reducing nitrogen oxide emissions and the eligible electric provider demonstrates to the satisfaction of the department of administration that the 3rd party is capable of achieving the reduction in nitrogen oxide emissions identified in the eligible electric provider's application for the grant.

**History:** 1999 a. 9.

**16.959 Wind energy.** The department shall:

**(1)** Promote the use of wind energy systems. "Wind energy system" means equipment which converts and then transfers or stores energy from the wind into usable forms of energy.

**(2)** Gather and disseminate information on wind characteristics and the economic feasibility of using wind energy systems in the state.

**(3)** Offer assistance to persons interested in installing a wind energy conversion system.

**(4)** Train University of Wisconsin−Extension staff to assist persons interested in siting wind energy conversion systems.

**(5)** Publish a list, at intervals not to exceed 6 months, of reputable manufacturers and distributors of wind energy conversion systems in the upper midwest region of the United States.

**History:** 1987 a. 142; 2001 a. 103.

**16.96 Population estimates.** The department of administration shall periodically make population estimates and projections. These population determinations shall be deemed to be the official state population estimates and projections. These determinations shall be used for all official estimate and projection purposes, except where otherwise directed by statute, but do not supersede s. 990.01 (29). The department shall:

**(1)** Annually make estimates of the current number of persons residing in each municipality and county of the state, and periodically make projections of the anticipated future population of the state, counties and municipalities.

**(2)** Prepare population estimates for purposes of state revenue sharing distribution under ch. 79. For this purpose:

(a) On or before August 10 of each year, the department shall make its preliminary population determinations and shall notify the clerk of each municipality and county of its preliminary population determinations. The reference date for all population determinations for state shared revenue distribution purposes shall be January 1.

(b) Municipalities and counties believing that population determinations under par. (a) are based upon incorrect information may, no later than September 15 of the same year in which the determination is made, challenge the determination by filing their specific objections, and evidence in support thereof, with the department. If the challenge is denied by the department, the municipality or county may appeal the denial, by October 1 of the same year, by notifying the department that the appellant intends to have a special census conducted by the U.S. bureau of the census in support of the appeal under par. (dm).

(c) On or before October 10 of each year, the department shall make any necessary adjustments in its population determinations for the November distribution, and shall notify the clerk of any affected municipality or county of these adjustments. The adjusted population determinations shall be consistent with the methods used statewide for population determinations, and adjustments from the August 10 population determinations shall be made only to accommodate corrected information.

(cm) The July preliminary distribution shall be based on the final population determination of the previous year.

(d) Except as authorized in pars. (dm) and (e), the population determinations shall be based upon the last previous federal decennial or special census or other official statewide census and shall take into consideration growth rates of municipalities.

(dm) The results of special censuses conducted for municipalities and counties under contract with the U.S. bureau of the census shall be used as a basis for the respective population determinations on August 10 if the final certified results of such censuses are received by the department before July 1 in the year in which the determination is made. The results of special censuses conducted for municipalities and counties under contract with the U.S. bureau of the census shall be used as a basis for the respective population determinations on October 10 if the final certified results of such censuses are received by the department before October 1 in the year in which the determination is made. If a municipality or county notifies the department in writing by October 1 of its intention to contract for a special census with the U.S. bureau of the census in support of a challenge to the August 10 population determination, and if the final certified results of such a special census are received by the department before July 15 in the following year, the department shall adjust the preceding October 10 population estimate to reflect the results of the special census. If a municipality or county notifies the department of its intention to contract for a special census but the results are not received by July 15 in the following year, the department may use the best information from the most recent federal census. The department shall report the adjusted population determination to the department of revenue before August 1 of the year subsequent to the challenge. The department shall prorate census results for census dates occurring after the reference date of any population determination back to the reference date of the estimate for all municipalities and counties under par. (a). Upon receiving an adjusted population determination, the department of revenue shall correct shared revenue distributions under subch. I of ch. 79 according to s. 79.08. If a municipality contracts with the U.S. bureau of the census for a special census, the municipality shall assure that the results of such special census are certified to the department not later than 30 days after the release of the census results by the U.S. bureau of the census.

(e) Before August 1 of the year following the year in which a federal decennial census is taken, the department shall adjust the October 10 population determinations of the decennial census year to correspond to the final federal decennial census results as reported to an agency of the state by the U.S. bureau of the census under 13 USC 141 (c). The department may use preliminary results from the decennial census for any municipality or a county for which the final results are not available before August 1 of the year following the decennial census year. The department shall prorate each population determination adjustment from the decennial census date back to the reference date of the estimate for all municipalities and counties under par. (a) in the decennial census year. The department shall report the adjusted population determination to the department of revenue before August 1 of the year following the federal decennial census year. Upon receiving an adjusted population determination, the department of revenue shall correct shared revenue distributions under subch. I of ch. 79 according to s. 79.08.

(f) Persons who are members in the Wisconsin Veterans Home at King shall be considered residents of the town of Farmington and of Waupaca County, persons who are members in the Wisconsin Veterans Home at Chippewa Falls shall be considered residents of the city of Chippewa Falls and of Chippewa County, and persons who are members in the Wisconsin Veterans Home at Union Grove shall be considered residents of the town of Dover

and of Racine County for purposes of the state revenue sharing distribution under subch. I of ch. 79.

**(3)** (a) Establish a demographic services center for the purpose of developing and administering systems needed to carry out the functions of the department under subs. (1) and (2), maintaining a current repository of appropriate published and computer retrievable federal census information and cooperating with state agencies and regional planning agencies so that the department's population estimates, projections and published reports are useful for planning and other purposes for which they are required. The center shall coordinate population information development and use. The center shall provide assistance to and encourage and coordinate efforts by state and local agencies, regional planning agencies and private businesses and associations to inform the public regarding the federal census process and the importance of obtaining a complete, accurate federal decennial census. The department may enter into agreements with state and local agencies or regional planning agencies for their assistance in the preparation of population estimates, projections and forecasts.

(b) Maintain and keep current throughout the decade the maps of congressional and legislative district boundaries received from the legislative reference bureau under s. 13.92 (1) (a) 6. and provide copies thereof to the elections commission.

(c) Serve as the state's liaison to the U.S. bureau of the census to facilitate accurate federal decennial census counts in this state.

**History:** 1971 c. 215; 1973 c. 37, 333; 1975 c. 189; 1977 c. 29 ss. 93 to 95, 1648 (1), (3); 1979 c. 34; 1981 c. 20; 1983 a. 29; 1987 a. 142; 1989 a. 31; 1991 a. 39, 269; 1999 a. 63; 2005 a. 22; 2007 a. 1; 2015 a. 118.

**Cross−reference:** See also s. Adm 3.01, Wis. adm. code.

**16.9645 Interoperability council. (1)** In this section:

(a) "Council" means the interoperability council created under s. 15.107 (18).

(b) "Dispatch center" has the meaning given for "public safety answering point" in s. 256.35 (1) (gm).

(c) "Interoperability" means the ability of public safety agencies to communicate with each other and with agencies and entities identified under sub. (2) (a) by means of radio or associated communications systems, including the exchange of voice, data, or video communications on demand and in real time, as needed and authorized.

(d) "Public safety agency" has the meaning given in s. 256.35 (1) (g).

**(2)** The council shall do all of the following:

(a) Identify types of agencies and entities, including public works and transportation agencies, hospitals, and volunteer emergency services agencies to be included, in addition to public safety agencies, in a statewide public safety interoperable communication system.

(b) Recommend short−term and long−term goals to achieve a statewide public safety interoperable communication system.

(c) Recommend and periodically review a strategy and timeline for achieving the goals under par. (b), including objectives for local units of government.

(d) Assist the department of justice in identifying and obtaining funding to implement a statewide public safety interoperable communication system.

(e) Advise the department of justice and the department of military affairs on allocating funds, including those available for homeland security, for the purpose of achieving the goals under par. (b).

(f) Make recommendations to the department of justice on all of the following:

1. Technical and operational standards for public safety interoperable communication systems.

2. Guidelines and procedures for using public safety interoperable communication systems.

3. Minimum standards for public safety interoperable communication systems, facilities, and equipment used by dispatch centers.

4. Certification criteria for persons who operate public safety interoperable communication systems for dispatch centers.

**History:** 2007 a. 79; 2009 a. 180; 2013 a. 20.

**16.965 Planning grants to local governmental units. (1)** In this section:

(a) "Local governmental unit" means a county, city, village, town or regional planning commission.

(b) "Smart growth area" means an area that will enable the development and redevelopment of lands with existing infrastructure and municipal, state and utility services, where practicable, or that will encourage efficient development patterns that are both contiguous to existing development and at densities that have relatively low municipal, state governmental and utility costs.

**(2)** From the appropriations under s. 20.505 (1) (cm) and (ud), the department may provide grants to local governmental units to be used to finance the cost of planning activities, including contracting for planning consultant services, public planning sessions and other planning outreach and educational activities, or for the purchase of computerized planning data, planning software or the hardware required to utilize that data or software. The department shall require any local governmental unit that receives a grant under this section to finance a percentage of the cost of the product or service to be funded by the grant from the resources of the local governmental unit. The department shall determine the percentage of the cost to be funded by a local governmental unit based on the number of applications for grants and the availability of funding to finance grants for the fiscal year in which grants are to be provided. A local governmental unit that desires to receive a grant under this subsection shall file an application with the department. The application shall contain a complete statement of the expenditures proposed to be made for the purposes of the grant. No local governmental unit is eligible to receive a grant under this subsection unless the local governmental unit agrees to utilize the grant to finance planning for all of the purposes specified in s. 66.1001 (2).

**(4)** In determining whether to approve a proposed grant, preference shall be accorded to applications of local governmental units that contain all of the following elements:

(a) Planning efforts that address the interests of overlapping or neighboring jurisdictions.

(b) Planning efforts that contain a specific description of the means by which all of the following local, comprehensive planning goals will be achieved:

1. Promotion of the redevelopment of lands with existing infrastructure and public services and the maintenance and rehabilitation of existing residential, commercial and industrial structures.

2. Encouragement of neighborhood designs that support a range of transportation choices.

3. Protection of natural areas, including wetlands, wildlife habitats, lakes, woodlands, open spaces and groundwater resources.

4. Protection of economically productive areas, including farmland and forests.

5. Encouragement of land uses, densities and regulations that promote efficient development patterns and relatively low municipal, state governmental and utility costs.

6. Preservation of cultural, historic and archaeological sites.

7. Encouragement of coordination and cooperation among nearby units of government.

8. Building of community identity by revitalizing main streets and enforcing design standards.

9. Providing an adequate supply of affordable housing for individuals of all income levels throughout each community.

10. Providing adequate infrastructure and public services and an adequate supply of developable land to meet existing and future market demand for residential, commercial and industrial uses.

11. Promoting the expansion or stabilization of the current economic base and the creation of a range of employment opportunities at the state, regional and local levels.

12. Balancing individual property rights with community interests and goals.

13. Planning and development of land uses that create or preserve varied and unique urban and rural communities.

14. Providing an integrated, efficient and economical transportation system that affords mobility, convenience and safety and that meets the needs of all citizens, including transit−dependent and disabled citizens.

(c) Planning efforts that identify smart growth areas.

(d) Planning efforts, including subsequent updates and amendments, that include development of implementing ordinances, including ordinances pertaining to zoning, subdivisions and land division.

(e) Planning efforts for which completion is contemplated within 30 months of the date on which a grant would be awarded.

(f) Planning efforts that provide opportunities for public participation throughout the planning process.

**(5)** The department may, upon application, grant a local governmental unit that has received a grant under sub. (2) and that has not adopted a comprehensive plan under s. 66.1001 an extension of time to adopt a comprehensive plan. During the period of the extension, the local governmental unit shall be exempt from the requirements under s. 66.1001 (3).

**History:** 1999 a. 9, 148, 185; 2001 a. 16, 30, 105; 2003 a. 33 s. 2813; 2009 a. 372; 2013 a. 20.

**Cross−reference:** See also ch. Adm 48, Wis. adm. code.

Challenges to "Smart Growth": State Legislative Approaches to Comprehensive Growth Planning and the Local Government Issue. Yajnik. 2004 WLR 229.

**16.9651 Transportation planning grants to local governmental units. (1)** In this section, "local governmental unit" means a county, city, village, town or regional planning commission.

**(2)** From the appropriation under s. 20.505 (1) (z), the department may provide grants to local governmental units to be used to finance the cost of planning activities related to the transportation element, as described in s. 66.1001 (2) (c), of a comprehensive plan, as defined in s. 66.1001 (1) (a), including contracting for planning consultant services, public planning sessions, and other planning outreach and educational activities, or for the purchase of computerized planning data, planning software, or the hardware required to utilize that data or software. The department may require any local governmental unit that receives a grant under this section to finance not more than 25 percent of the cost of the product or service to be funded by the grant from the resources of the local governmental unit. Prior to awarding a grant under this section, the department shall forward a detailed statement of the proposed expenditures to be made under the grant to the secretary of transportation and obtain his or her written approval of the proposed expenditures.

**History:** 1999 a. 9; 2001 a. 30.

**Cross−reference:** See also ch. Adm 48, Wis. adm. code.

**16.966 Geographic information systems.** The department may develop and maintain geographic information systems relating to land in this state for the use of governmental and nongovernmental units.

**History:** 1997 a. 27 ss. 133am to 133d, 9456 (3m); 2003 a. 33 s. 2811; 2003 a. 48 ss. 10, 11; 2003 a. 206 s. 23; 2005 a. 25 ss. 91, 2493.

**16.967 Land information program. (1)** DEFINITIONS. In this section:

(a) "Agency" has the meaning given in s. 16.70 (1e).

(b) "Land information" means any physical, legal, economic, or environmental information or characteristics concerning land, water, groundwater, subsurface resources, or air in this state. "Land information" includes information relating to topography, soil, soil erosion, geology, minerals, vegetation, land cover, wildlife, associated natural resources, land ownership, land use, land use controls and restrictions, jurisdictional boundaries, tax assessment, land value, land survey records and references, geodetic control networks, aerial photographs, maps, planimetric data, remote sensing data, historic and prehistoric sites, and economic projections.

(c) "Land information system" means an orderly method of organizing and managing land information and land records.

(d) "Land records" means maps, documents, computer files, and any other information storage medium in which land information is recorded.

(e) "Systems integration" means land information that is housed in one jurisdiction or jurisdictional subunit and is available to other jurisdictions, jurisdictional subunits, public utilities, and other private sector interests.

**(3)** DUTIES OF DEPARTMENT. The department shall direct and supervise the land information program and serve as the state clearinghouse for access to land information. In addition, the department shall:

(a) Provide technical assistance and advice to state agencies and local governmental units with land information responsibilities.

(b) Maintain and distribute an inventory of land information available for this state, land records available for this state, and land information systems.

(c) Prepare guidelines to coordinate the modernization of land records and land information systems.

(cm) Provide standards for the preparation of countywide plans for land records modernization under s. 59.72 (3) (b), including a list of minimum elements to be addressed in the plan.

(d) Review project applications received under sub. (7) and determine which projects are approved.

(e) Review for approval a countywide plan for land records modernization prepared under s. 59.72 (3) (b).

(f) Review reports received under s. 59.72 (2) (b) and determine whether county expenditures of funds received under sub. (7) and s. 59.72 (5) (b) have been made for authorized purposes.

(g) Post reports received under s. 59.72 (2) (b) on the Internet.

(h) Establish an implementation plan for a statewide digital parcel map.

**(4)** FUNDING REPORT. The department shall identify and study possible program revenue sources or other revenue sources for the purpose of funding the operations of the land information program, including grants to counties under sub. (7).

**(6)** REPORTS. (a) By March 31 of each year, the department of administration, the department of agriculture, trade and consumer protection, the department of safety and professional services, the department of health services, the department of natural resources, the department of tourism, the department of revenue, the department of transportation, the board of regents of the University of Wisconsin System, the public service commission, and the board of curators of the historical society shall each submit to the department a plan to integrate land information to enable such information to be readily translatable, retrievable, and geographically referenced for use by any state, local governmental unit, or public utility. Upon receipt of this information, the department shall integrate the information to enable the information to be used to meet land information data needs. The integrated information

shall be readily translatable, retrievable, and geographically referenced to enable members of the public to use the information.

(b) No later than January 1, 2017, the department shall submit to the members of the joint committee on finance a report on the progress in developing a statewide digital parcel map.

**(7)** AID TO COUNTIES. (a) A county board that has established a county land information office under s. 59.72 (3) may apply to the department on behalf of any local governmental unit, as defined in s. 59.72 (1) (c), located wholly or partially within the county for a grant for any of the following projects, except that a county shall complete the project under subd. 1. and make public records in the land information system accessible on the Internet before the county may expend any grant moneys under this paragraph for any other purpose:

1. The design, development, and implementation of a land information system that contains and integrates, at a minimum, property and ownership records with boundary information, including a parcel identifier referenced to the U.S. public land survey; tax and assessment information; soil surveys, if available; wetlands identified by the department of natural resources; a modern geodetic reference system; current zoning restrictions; and restrictive covenants.

2. The preparation of parcel property maps that refer boundaries to the public land survey system and are suitable for use by local governmental units for accurate land title boundary line or land survey line information.

2m. In coordination with the department, the creation, maintenance, or updating of a digital parcel map.

3. The preparation of maps that include a statement documenting accuracy if the maps do not refer boundaries to the public land survey system and that are suitable for use by local governmental units for planning purposes.

4. Systems integration projects.

5. To support technological developments and improvements for the purpose of providing Internet−accessible housing assessment and sales data.

(am) 1. Subject to subds. 2. and 3., the department shall award land information system base budget grants for eligible projects under par. (a) to enable a county land information office to develop, maintain, and operate a basic land information system.

2. The minimum amount of a grant under this paragraph is determined by subtracting the amount of fees that the county retained under s. 59.72 (5) (b) in the preceding fiscal year from $100,000. The department is not required to award a grant to a county that retained at least $100,000 in fees under s. 59.72 (5) (b) in the preceding fiscal year.

3. If the moneys available for grants under this paragraph in a fiscal year are insufficient to pay all amounts determined under subd. 2., the department shall establish a system to prorate the grants.

(b) In addition to any other grant received under this subsection, the department may award a grant to any county in an amount not less than $1,000 per year to be used for the training and education of county employees for the design, development, and implementation of a land information system.

**(7m)** SUSPENSION OF AID. (a) If the department determines that grants under sub. (7) or retained fees under s. 59.72 (5) (b) have been used for unauthorized purposes, the department shall notify the county or local governmental unit of the determination. The notice shall include a listing of unauthorized expenditures. The county or local governmental unit shall have not less than 30 days to contest the determination or resolve the unauthorized expenditures. If the unauthorized expenditures are not resolved in a manner acceptable to the department, the department may suspend the eligibility of the county or local governmental unit that made unauthorized expenditures to receive further grants or to retain further fee revenues.

(b) If the department determines that a county has violated s. 59.72, the department shall suspend the eligibility of the county to receive grants under sub. (7) and, after June 30, 2017, the county shall be eligible to retain only $6 of the portion of each fee submitted to the department under s. 59.72 (5) (a). After not less than one year, if the department determines that the county has resolved the violation, the department may reinstate the eligibility of the county for grants under sub. (7) and for retaining $8 of the portion of each fee submitted to the department under s. 59.72 (5) (a).

**(8)** ADVICE; COOPERATION. In carrying out its duties under this section, the department may seek advice and assistance from the board of regents of the University of Wisconsin System and other agencies, local governmental units, and other experts involved in collecting and managing land information. Agencies shall cooperate with the department in the coordination of land information collection.

**(9)** TECHNICAL ASSISTANCE; EDUCATION. The department may provide technical assistance to counties and conduct educational seminars, courses, or conferences relating to land information. The department shall charge and collect fees sufficient to recover the costs of activities authorized under this subsection.

**History:** 1989 a. 31, 339; 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 403, 9116 (5), 9126 (19); 1995 a. 201; 1997 a. 27 ss. 141am to 141an, 9456 (3m); 1999 a. 9 ss. 114m, 114n, 9401 (2zu); 2001 a. 16; 2003 a. 33 ss. 2811, 2813; 2003 a. 48 ss. 10, 11; 2003 a. 206 s. 23; 2005 a. 25 ss. 92, 2493, 2495; 2007 a. 20 s. 9121 (6) (a); 2009 a. 314; 2011 a. 32; 2013 a. 20.

**Cross−reference:** See also ch. Adm 47, Wis. adm. code.

**16.9675 Land activities.** The department shall do all of the following:

**(1)** Identify state land use goals and recommend these goals to the governor.

**(2)** Identify state land use priorities to further the state's land use goals and recommend to the governor legislation to implement these priorities.

**(3)** Study areas of cooperation and coordination in the state's land use statutes and recommend to the governor legislation to harmonize these statutes to further the state's land use goals.

**(4)** Study areas of the state's land use statutes that conflict with each other and recommend to the governor legislation to resolve these conflicts to further the state's land use goals.

**(5)** Identify areas of the state's land use statutes that conflict with county or municipal land use ordinances, and areas of county or municipal land use ordinances that conflict with each other, and recommend to the governor legislation to resolve these conflicts.

**(6)** Establish a state agency resource working group that is composed of representatives of the departments of administration; agriculture, trade and consumer protection; commerce; natural resources; revenue; transportation; and other appropriate agencies to discuss, analyze, and address land use issues and related policy issues, including the following:

(a) Gathering information about the land use plans of state agencies.

(b) Establishing procedures for the distribution of the information gathered under par. (a) to other state agencies, local units of government, and private persons.

(c) Creating a system to facilitate, and to provide training and technical assistance for the development of, local intergovernmental land use planning.

**(7)** Study the activities of local units of government in the land use area to determine how these activities impact on state land use goals, and recommend to the governor legislation that fosters coordination between local land use activities and state land use goals.

**(8)** Identify procedures for facilitating local land use planning efforts, including training and technical assistance for local units of government, and recommend to the governor legislation to implement such procedures.

**(9)** Gather and analyze information about the land use activities in this state of the federal government and American Indian governments and inform the governor of the impact of these activities on state land use goals.

**(10)** Study any other issues that are reasonably related to the state's land use goals, including methods for alternative dispute resolution for disputes involving land use issues, and recommend to the governor legislation in the areas studied by the department that would further the state's land use goals.

**(11)** Gather information about land use issues in any reasonable way, including the following:

(a) Establishing a state−local government−private sector working group to study and advise the department on land use issues.

(b) Holding public hearings or information meetings on land use issues.

(c) Conducting surveys on land use issues.

(d) Consulting with any person who is interested in land use issues.

**History:** 2005 a. 25.

**16.968 Groundwater survey and analysis.** The department shall allocate funds for programs of groundwater survey and analysis to the department of natural resources and the geological and natural history survey following review and approval of a mutually agreed upon division of responsibilities concerning groundwater programs between the department of natural resources and the geological and natural history survey, a specific expenditure plan and groundwater data collection standards. State funds allocated under this section shall be used to match available federal funds prior to being used for solely state−funded activities.

**History:** 1979 c. 34; 1997 a. 27 ss. 142, 142am, 9456 (3m); 2003 a. 33 s. 2811; 2003 a. 48 ss. 10, 11; 2003 a. 206 s. 23.

**16.969 Fees for certain high−voltage transmission lines. (1)** In this section:

(a) "Commission" means the public service commission.

(b) "High−voltage transmission line" means a high−voltage transmission line, as defined in s. 196.491 (1) (f), that is designed for operation at a nominal voltage of 345 kilovolts or more.

**(2)** The department shall promulgate rules that require a person who is issued a certificate of public convenience and necessity by the commission under s. 196.491 (3) for a high−voltage transmission line to pay the department the following fees:

(a) An annual impact fee in an amount equal to 0.3 percent of the cost of the high−voltage transmission line, as determined by the commission under s. 196.491 (3) (gm).

(b) A one−time environmental impact fee in an amount equal to 5 percent of the cost of the high−voltage transmission line, as determined by the commission under s. 196.491 (3) (gm).

**(3)** (a) The department shall distribute the fees that are paid by a person under the rules promulgated under sub. (2) (a) to each town, village and city that is identified by the commission under s. 196.491 (3) (gm) in proportion to the amount of investment that is allocated by the commission under s. 196.491 (3) (gm) to each such town, village and city.

(b) The fee that is paid by a person under the rules promulgated under sub. (2) (b) shall be distributed as follows:

1. The department shall pay 50 percent of the fee to each county that is identified by the commission under s. 196.491 (3) (gm) in proportion to the amount of investment that is allocated by the commission under s. 196.491 (3) (gm) to each such county.

2. The department shall pay 50 percent of the fee to each town, village and city that is identified by the commission under s. 196.491 (3) (gm) in proportion to the amount of investment that is allocated by the commission under s. 196.491 (3) (gm) to each such town, village and city.

**(4)** A county, town, village, or city that receives a distribution under sub. (3) (b) may use the distribution only for park, conservancy, wetland or other similar environmental programs, unless the commission approves a different use under this subsection. A county, town, village, or city that receives a distribution may request in writing at any time that the commission approve a different use. The commission shall make a decision no later than 14 days after receiving such a request. The commission shall approve a request if it finds that the request is in the public interest.

**History:** 1999 a. 9; 2003 a. 89.

**Cross−reference:** See also Adm 46, Wis. adm. code.

## SUBCHAPTER VII

## INFORMATION TECHNOLOGY

**16.97 Definitions.** In this subchapter:

**(1m)** "Agency" has the meaning given in s. 16.70 (1e).

**(2)** "Authority" has the meaning given in s. 16.70 (2).

**(3)** "Computer services" means any services in which a computer is utilized other than for personal computing purposes.

**(4)** "Data processing" means the delivery of information processing services.

**(5m)** "Executive branch agency" has the meaning given in s. 16.70 (4).

**(5p)** "Form" means any written material, by whatever means printed, generated or reproduced, with blank spaces left for the entry of additional information to be used for the purpose of providing information, collecting information or requiring action in any transaction involving this state.

**(5s)** "Forms management" means the system of providing forms to accomplish necessary operations efficiently and economically, including analysis and design of forms, improvement of methods of procurement, distribution and disposition of forms and improvement of methods to keep to a reasonable level the public's duty to report. "Forms management" includes the elimination of unnecessary forms and of unnecessary data collection and standardizing, consolidating and simplifying forms and related procedures.

**(6)** "Information technology" means the electronic processing, storage and transmission of information including data processing and telecommunications.

**(6m)** "Information technology portfolio" means information technology systems, applications, infrastructure, and information resources and human resources devoted to developing and maintaining information technology systems.

**(7)** "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

**(8)** "Personal computing" means utilizing a computer that is located at the same work station where the input or output of data is conducted.

**(8m)** "Public contact form" means a form generated and used by any agency in transactions between the agency and a member of the public.

**(9)** "Supercomputer" means a special purpose computer that performs in a scientific environment and that is characterized by a very high processing speed and power.

**(10)** "Telecommunications" means all services and facilities capable of transmitting, switching, or receiving information in any form by wire, radio, or other electronic means.

**History:** 2001 a. 16 ss. 346, 347, 348, 1027; Stats. 2001 s. 22.01; 2003 a. 33 ss. 232, 752 to 756; Stats. 2003 s. 16.97; 2015 a. 55.

**16.971 Responsibilities of department. (2)** The department shall:

(a) Ensure that an adequate level of information technology services is made available to all agencies by providing systems analysis and application programming services to augment agency resources, as requested. The department shall also ensure that executive branch agencies, other than the board of regents of the University of Wisconsin System, make effective and efficient use of the information technology resources of the state. The department shall, in cooperation with agencies, establish policies, procedures and planning processes, for the administration of information technology services, which executive branch agencies shall follow. The policies, procedures and processes shall address the needs of agencies, other than the board of regents of the University of Wisconsin System, to carry out their functions. The department shall monitor adherence to these policies, procedures and processes.

(ae) Except as provided in sub. (2m), review and approve, modify or reject all forms approved by a records and forms officer for jurisdiction, authority, standardization of design and nonduplication of existing forms. Unless the department rejects for cause or modifies the form within 20 working days after receipt, it is considered approved. The department's rejection of any form is appealable to the public records board. If the head of an agency certifies to the department that the form is needed on a temporary basis, approval by the department is not required.

(am) Make as cost effective as possible the procurement and use of forms by agencies.

(ap) Prescribe a forms management program for agencies.

(b) Develop and maintain information technology resource planning and budgeting techniques at all levels of state government.

(c) Develop and maintain procedures to ensure information technology resource planning and sharing between executive branch agencies. The procedures shall ensure the interconnection of information technology resources of executive branch agencies, if interconnection is consistent with the strategic plans formulated under pars. (L) and (m).

(cf) Implement, operate, maintain, and upgrade an enterprise resource planning system capable of providing information technology services to all agencies in the areas of accounting, auditing, payroll and other financial services; procurement; human resources; and other administrative processes. The department may provide information technology services under this subsection to any executive branch agency under s. 16.70 (4). The department may also provide information technology services to any local governmental unit under this subsection.

(cm) Prescribe standards for data, application, and business process integration that shall be used by executive branch agencies, to the extent consistent with the statewide strategic plan formulated under par. (m), and that enable local governmental units to integrate their data, application, and business processes into state systems whenever feasible.

(d) Develop review and approval procedures which encourage timely and cost−effective hardware, software, and professional services acquisitions, and review and approve the acquisition of such items and services under those procedures.

(e) Collect, analyze and interpret, in cooperation with agencies, that data necessary to assist the information technology resource planning needs of the governor and legislature.

(f) Provide advice and assistance during budget preparation concerning information technology resource plans and capabilities.

(g) Ensure that management reviews of information technology organizations are conducted.

(h) Gather, interpret and disseminate information on new technological developments, management techniques and information technology resource capabilities and their possible effect on current and future management plans to all interested parties.

(i) Ensure that a level of information technology services are provided to all agencies that are equitable in regard to resource availability, cost and performance.

(j) Ensure that all executive branch agencies develop and operate with clear guidelines and standards in the areas of information technology systems development and that they employ good management practices and cost−benefit justifications.

(k) Ensure that all state data processing facilities develop proper privacy and security procedures and safeguards.

(L) Require each executive branch agency, other than the board of regents of the University of Wisconsin System, to adopt and submit to the department, in a form specified by the department, no later than March 1 of each year, a strategic plan for the utilization of information technology to carry out the functions of the agency in the succeeding fiscal year for review and approval under s. 16.976.

(Lg) 1. Develop, in consultation with each executive branch agency, other than the Board of Regents of the University of Wisconsin System, and adopt the following written policies for information technology development projects included in the strategic plan required of each executive branch agency under par. (L) and that either exceed $1,000,000 or that are vital to the functions of the executive branch agency:

a. A standardized reporting format.

b. A requirement that both proposed and ongoing information technology development projects be included.

2. The department shall submit for review by the joint legislative audit committee and for approval by the joint committee on information policy and technology any proposed policies required under subd. 1. and any proposed revisions to the policies.

(Lm) No later than 60 days after enactment of each biennial budget act, require each executive branch agency, other than the board of regents of the University of Wisconsin System, that receives funding under that act for an information technology development project to file with the department an amendment to its strategic plan for the utilization of information technology under par. (L). The amendment shall identify each information technology development project for which funding is provided under that act and shall specify, in a form prescribed by the department, the benefits that the agency expects to realize from undertaking the project.

(m) Assist in coordination and integration of the plans of executive branch agencies relating to information technology approved under par. (L) and, using these plans and the statewide long−range telecommunications plan under s. 16.979 (2) (a), formulate and revise biennially a consistent statewide strategic plan for the use and application of information technology. The department shall, no later than September 15 of each even−numbered year, submit the statewide strategic plan to the cochairpersons of the joint committee on information policy and technology and the governor.

(n) Maintain an information technology resource center to provide appropriate technical assistance and training to small agencies.

**(2m)** The following forms are not subject to review or approval by the department:

(a) Forms that must be completed by applicants for admission to an institution of the University of Wisconsin System or by students of such an institution who are applying for financial aid, including loans, or for a special course of study or who are adding or dropping courses, registering or withdrawing, establishing their residence or being identified or classified.

(b) Forms the use of which is required by federal law.

(c) Forms used by teachers to evaluate a student's academic performance.

(d) Forms used by hospitals and health care providers to bill or collect from patients and 3rd parties.

(e) Forms used by medical personnel in the treatment of patients.

(f) Forms used to collect data from research subjects in the course of research projects administered by the board of regents of the University of Wisconsin System.

(g) Forms used by the department of corrections in the investigation or processing of persons either under the control or custody of the department or under investigation by a court.

(gm) Forms relating to youth corrections used by the department of health services in the investigation or processing of persons either under the control or custody of the department or under investigation by a court.

(h) Forms that are not public contact forms.

**(3)** (a) The department shall notify the joint committee on finance in writing of the proposed acquisition of any information technology resource that the department considers major or that is likely to result in a substantive change of service, and that was not considered in the regular budgeting process and is to be financed from general purpose revenues or corresponding revenues in a segregated fund. If the cochairpersons of the committee do not notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposed acquisition within 14 working days after the date of the department's notification, the department may approve acquisition of the resource. If, within 14 working days after the date of the department's notification, the cochairpersons of the committee notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposed acquisition, the department shall not approve acquisition of the resource unless the acquisition is approved by the committee.

(b) The department shall promptly notify the joint committee on finance in writing of the proposed acquisition of any information technology resource that the department considers major or that is likely to result in a substantive change in service, and that was not considered in the regular budgeting process and is to be financed from program revenues or corresponding revenues from program receipts in a segregated fund.

**(4)** (a) The department may license or authorize executive branch agencies to license computer programs developed by executive branch agencies to the federal government, other states and municipalities. Any agency other than an executive branch agency may license a computer program developed by that agency to the federal government, other states and municipalities.

(b) Annual license fees may be established at not more than 25 percent of the program development cost and shall be credited to the agency which developed the program.

(c) In this subsection:

1. "Computer programs" are the processes for the treatment and verbalization of data.

2. "Municipality" has the meaning designated in s. 66.0901 (1) (a).

**(6)** Notwithstanding sub. (2), the legislative reference bureau shall approve the specifications for preparation and schedule for delivery of computer databases containing the Wisconsin statutes.

**(9)** In conjunction with the public defender board, the director of state courts, the departments of corrections and justice and district attorneys, the department may maintain, promote and coordinate automated justice information systems that are compatible among counties and the officers and agencies specified in this subsection, using the moneys appropriated under s. 20.505 (1) (kh), (kp), and (kq). The department shall annually report to the legislature under s. 13.172 (2) concerning the department's efforts to improve and increase the efficiency of integration of justice information systems.

**(10)** The department shall maintain, and provide the department of justice with general access to, a case management system that allows district attorneys to manage all case−related information and share the information among prosecutors.

**(11)** The department may charge executive branch agencies for information technology development and management services provided to them by the department under this section.

**(13)** Provide juvenile correctional facilities, school districts, and cooperative educational service agencies with telecommunications access under s. 16.997 and contract with telecommunications providers to provide that access.

**(14)** Provide private colleges, technical college districts, public library boards, public library systems, and public museums with telecommunications access under s. 16.997 and contract with telecommunications providers to provide that access.

**(15)** Provide private schools and tribal schools, as defined in s. 115.001 (15m), with telecommunications access under s. 16.997 and contract with telecommunications providers to provide that access.

**(16)** Provide the Wisconsin Center for the Blind and Visually Impaired and the Wisconsin Educational Services Program for the Deaf and Hard of Hearing with telecommunications access under s. 16.997 and contract with telecommunications providers to provide that access.

**(17)** Provide educational agencies that are eligible for a rate discount on telecommunications services under 47 USC 254 with additional telecommunications access under s. 16.998 and contract with telecommunications providers to provide that access.

**History:** 1971 c. 261; Stats. 1971 s. 16.96; Stats. 1971 s. 16.97; 1975 c. 39; 1977 c. 29; 1977 c. 196 s. 130 (3); 1979 c. 34, 221; 1981 c. 20; 1987 a. 142; 1989 a. 31; 1991 a. 39 ss. 180b, 192b; Stats. 1991 s. 16.971; 1993 a. 16; 1995 a. 27 ss. 324, 331, 408 to 423m, 9126 (19); 1995 a. 417; 1997 a. 27, 36; 1999 a. 9, 29, 32; 1999 a. 150 s. 672; 1999 a. 185, 186; 2001 a. 16 ss. 349 to 360; Stats. 2001 s. 22.03; 2001 a. 104; 2003 a. 33 ss. 234d to 238d, 757 to 767; Stats. 2003 s. 16.971; 2005 a. 25, 220, 344; 2007 a. 20 ss. 128c to 128m, 9121 (6) (a); 2009 a. 302; 2011 a. 32; 2013 a. 20, 323.

**16.972 Powers of the department. (1)** In this section:

(ag) "Qualified museum" means a nonprofit or publicly owned museum that has an educational mission.

(b) "Qualified postsecondary institution" means a regionally accredited 4−year nonprofit college or university having its regional headquarters and principal place of business in this state or a tribally controlled college located in this state.

(c) "Qualified private school" means a private school, as defined in s. 115.001 (3r), operating elementary or high school grades.

(cm) "Qualified tribal school" means a tribal school as defined in s. 115.001 (15m).

(d) "Qualified zoo" means a bona fide publicly owned zoo that has an educational mission.

**(2)** The department may:

(a) Provide such telecommunications services to agencies as the department considers to be appropriate. An agency may use telecommunications services, including data and voice over Internet services, provided to the agency by or through the department only for the purpose of carrying out its functions. No agency may offer, resell, or provide telecommunications services, including data and voice over Internet services, that are available from a private telecommunications carrier to the general public or to any other public or private entity.

(b) Except as provided in par. (a), provide such computer services and telecommunications services to local governmental units and the broadcasting corporation and provide such telecommunications services to qualified private schools, tribal schools, postsecondary institutions, museums, and zoos, as the department considers to be appropriate and as the department can efficiently and economically provide. The department may exercise this power only if in doing so it maintains the services it provides at least at the same levels that it provides prior to exercising this power and it does not increase the rates chargeable to users served prior to exercise of this power as a result of exercising this power. The department may charge local governmental units, the broadcasting corporation, and qualified private schools, tribal schools, postsecondary institutions, museums, and zoos, for services pro-

vided to them under this paragraph in accordance with a methodology determined by the department. Use of telecommunications services by a qualified private school, tribal school, or postsecondary institution shall be subject to the same terms and conditions that apply to a municipality using the same services. The department shall prescribe eligibility requirements for qualified museums and zoos to receive telecommunications services under this paragraph.

(c) Provide such supercomputer services to agencies, local governmental units and entities in the private sector as the department considers to be appropriate and as the department can efficiently and economically provide. The department may exercise this power only if in doing so it maintains the services it provides at least at the same levels that it provides prior to exercising this power and it does not increase the rates chargeable to users served prior to exercise of this power as a result of exercising this power. The department may charge agencies, local governmental units and entities in the private sector for services provided to them under this paragraph in accordance with a methodology determined by the department.

(d) Undertake such studies, contract for the performance of such studies, and appoint such councils and committees for advisory purposes as the department considers appropriate to ensure that the department's plans, capital investments and operating priorities meet the needs of agencies local governmental units and entities in the private sector served by the department. The department may compensate members of any council or committee for their services and may reimburse such members for their actual and necessary expenses incurred in the discharge of their duties.

(e) Provide technical services to agencies in making hardware acquisitions to be used for computer services.

(f) Acquire, operate, and maintain any information technology equipment or systems required by the department to carry out its functions, and provide information technology development and management services related to those information technology systems. The department may assess executive branch agencies, other than the board of regents of the University of Wisconsin System, for the costs of equipment or systems acquired, operated, maintained, or provided or services provided under this paragraph in accordance with a methodology determined by the department. The department may also charge any agency for such costs as a component of any services provided by the department to the agency.

(g) Assume direct responsibility for the planning and development of any information technology system in the executive branch of state government outside of the University of Wisconsin System that the department determines to be necessary to effectively develop or manage the system, with or without the consent of any affected executive branch agency. The department may charge any executive branch agency for the department's reasonable costs incurred in carrying out its functions under this paragraph on behalf of that agency.

(h) Establish master contracts for the purchase of materials, supplies, equipment, or contractual services relating to information technology or telecommunications for use by agencies, authorities, local governmental units, or entities in the private sector. The department may require any executive branch agency, other than the board of regents of the University of Wisconsin System, to make any purchases of materials, supplies, equipment, or contractual services relating to information technology or telecommunications that are included under the contract pursuant to the terms of the contract.

(i) Accept gifts, grants, and bequests, to be used for the purposes for which made, consistently with applicable laws.

**History:** 2001 a. 16 ss. 361 to 365, 1029; Stats. 2001 s. 22.05; 2003 a. 33 ss. 768 to 776; Stats. 2003 s. 16.972; 2005 a. 25; 2009 a. 302.

**16.973 Duties of the department.** The department shall:

**(1)** Provide or contract with a public or private entity to provide computer services to agencies. The department may charge agencies for services provided to them under this subsection in accordance with a methodology determined by the department.

**(2)** Promulgate methodologies for establishing all fees and charges established or assessed by the department under this subchapter.

**(3)** Facilitate the implementation of statewide initiatives, including development and maintenance of policies and programs to protect the privacy of individuals who are the subjects of information contained in the databases of agencies, and of technical standards and sharing of applications among agencies and any participating local governmental units or entities in the private sector.

**(4)** Ensure responsiveness to the needs of agencies for delivery of high−quality information technology processing services on an efficient and economical basis, while not unduly affecting the privacy of individuals who are the subjects of the information being processed by the department.

**(5)** Utilize all feasible technical means to ensure the security of all information submitted to the department for processing by agencies, local governmental units and entities in the private sector.

**(6)** With the advice of the ethics commission, adopt and enforce standards of ethical conduct applicable to its paid consultants which are similar to the standards prescribed in subch. III of ch. 19, except that the department shall not require its paid consultants to file statements of economic interests.

**(7)** Prescribe and revise as necessary performance measures to ensure financial controls and accountability, optimal personnel utilization, and customer satisfaction for all information technology functions in the executive branch outside of the University of Wisconsin System and annually, no later than March 31, report to the joint committee on information policy and technology concerning the performance measures utilized by the department and the actual performance of the department and the executive branch agencies measured against the performance measures then in effect.

**(8)** Offer the opportunity to local governmental units to voluntarily obtain computer or supercomputer services from the department when those services are provided under s. 16.972 (2) (b) or (c), and to voluntarily participate in any master contract established by the department under s. 16.972 (2) (h) or in the use of any informational system or device provided by the department under s. 16.974 (3).

**(9)** In consultation with the department of veterans affairs, administer a program to increase outreach to veterans regarding veterans services and benefits, and to provide training to employees of the department of veterans affairs and county veterans service officers.

**(10)** Promulgate:

(a) A definition of and methodology for identifying large, high−risk information technology projects.

(b) Standardized, quantifiable project performance measures for evaluating large, high−risk information technology projects.

(c) Policies and procedures for routine monitoring of large, high−risk information technology projects.

(d) A formal process for modifying information technology project specifications when necessary to address changes in program requirements.

(e) Requirements for reporting changes in estimates of cost or completion date to the department and the joint committee on information policy and technology.

(f) Methods for discontinuing projects or modifying projects that are failing to meet performance measures in such a way to correct the performance problems.

(g) Policies and procedures for the use of master leases under s. 16.76 (4) to finance new large, high−risk information technology system costs and maintain current large, high−risk information technology systems.

(h) A standardized progress point in the execution of large, high−risk information technology projects at which time the estimated costs and date of completion of the project is reported to the department and the joint committee on information policy and technology.

**(11)** Promulgate:

(a) A requirement that each executive branch agency review commercially available information technology products prior to initiating work on a customized information technology development project to determine whether any commercially available product could meet the information technology needs of the agency.

(b) Procedures and criteria to determine when a commercially available information technology product must be used and when an executive branch agency may consider the modification or creation of a customized information technology product.

(c) A requirement that each executive branch agency submit for approval by the department and prior to initiating work on a customized information technology product a justification for the modification or creation by the agency of a customized information technology product.

**(12)** (a) In this subsection, "master lease" has the meaning given under s. 16.76 (4).

(b) Annually, no later than October 1, submit to the governor and the members of the joint committee on information policy and technology a report documenting the use by each executive branch agency, other than the Board of Regents of the University of Wisconsin System, of master leases to fund information technology projects in the previous fiscal year. The report shall contain all of the following information:

1. The total amount paid under master leases towards information technology projects in the previous fiscal year.

2. The master lease payment amounts approved to be applied to information technology projects in future years.

3. The total amount paid by each executive branch agency on each information technology project for which debt is outstanding, as compared to the total financing amount originally approved for that information technology project.

4. A summary of repayments made towards any master lease in the previous fiscal year.

**(13)** (a) Except as provided in par. (b), include in each contract with a vendor of information technology that involves a large, high−risk information technology project under sub. (10) or that has a projected cost greater than $1,000,000, and require each executive branch agency authorized under s. 16.71 (1m) to enter into a contract for materials, supplies, equipment, or contractual services relating to information technology to include in each contract with a vendor of information technology that involves a large, high−risk information technology project under sub. (10) or that has a projected cost greater than $1,000,000 a stipulation requiring the vendor to submit to the department for approval any order or amendment that would change the scope of the contract and have the effect of increasing the contract price. The stipulation shall authorize the department to review the original contract and the order or amendment to determine all of the following and, if necessary, to negotiate with the vendor regarding any change to the original contract price:

1. Whether the work proposed in the order or amendment is within the scope of the original contract.

2. Whether the work proposed in the order or amendment is necessary.

(b) The department or an executive branch agency may exclude from a contract described in par. (a) the stipulation required under par. (a) if all of the following conditions are satisfied:

1. Including such a stipulation would negatively impact contract negotiations or significantly reduce the number of bidders on the contract.

2. If the exclusion is sought by an executive branch agency, that agency submits to the department a plain−language explanation of the reasons the stipulation was excluded and the alternative provisions the executive branch agency will include in the contract to ensure that the contract will be completed on time and within the contract budget.

3. If the exclusion is sought by the department, the department prepares a plain−language explanation of the reasons the stipulation was excluded and the alternative provisions the department will include in the contract to ensure that the contract will be completed on time and within the contract budget.

4. The department submits for approval by the joint committee on information policy and technology any explanation and alternative contract provisions required under subd. 2. or 3. If, within 14 working days after the date that the department submits any explanation and alternative contract provisions required under this subdivision, the joint committee on information policy and technology does not contact the department, the explanation and alternative contract provisions shall be deemed approved.

**(14)** (a) Require each executive branch agency, other than the Board of Regents of the University of Wisconsin system, that has entered into an open−ended contract for the development of information technology to submit to the department quarterly reports documenting the amount expended on the information technology development project. In this subsection, "open−ended contract" means a contract for information technology that includes one or both of the following:

1. Stipulations that provide that the contract vendor will deliver information technology products or services but that do not specify a maximum payment amount.

2. Stipulations that provide that the contract vendor shall be paid an hourly wage but that do not set a maximum limit on the number of hours required to complete the information technology project.

(b) Compile and annually submit to the joint committee on information technology the reports required under par. (a).

**(16)** No later than March 1 and September 1 of each year, submit to the joint committee on information policy and technology a report that documents for each executive branch agency information technology project with an actual or projected cost greater than $1,000,000 or that the department of administration has identified as a large, high−risk information technology project under sub. (10) (a) all of the following:

(a) Original and updated project cost projections.

(b) Original and updated completion dates for the project and any stage of the project.

(c) An explanation for any variation between the original and updated costs and completion dates under pars. (a) and (b).

(d) A copy of any contract entered into by the department for the project and not provided in a previous report.

(e) All sources of funding for the project.

(f) The amount of any funding provided for the project through a master lease under s. 16.76 (4).

(g) Information about the status of the project, including any portion of the project that has been completed.

(h) Any other information about the project, or related information technology projects, requested by the joint committee on information policy and technology.

**History:** 2001 a. 16 ss. 367 to 369, 1030 to 1030m; 2003 a. 33 ss. 777 to 781; Stats. 2003 s. 16.973; 2007 a. 1, 20; 2015 a. 55, 118; 2015 a. 197 s. 51.

**16.974 Powers of the department.** The department may:

**(1)** Establish and collect assessments and charges for all authorized services provided by the department, subject to applicable agreements under subs. (2) and (2m).

**(2)** Subject to s. 16.972 (2) (b), enter into and enforce an agreement with any agency, any authority, any unit of the federal government, any local governmental unit, any entity in the private sector, or any tribal school, as defined in s. 115.001 (15m), to provide services authorized to be provided by the department to that agency, authority, unit, entity, or tribal school at a cost specified in the agreement.

**(2m)** Enter into and enforce an agreement with an individual to provide services authorized to be provided by the department to that individual.

**(3)** Develop or operate and maintain any system or device facilitating Internet or telephone access to information about programs of agencies, authorities, local governmental units, entities in the private sector, individuals, or any tribal schools, as defined in s. 115.001 (15m), or otherwise permitting the transaction of business by agencies, authorities, local governmental units, entities in the private sector, individuals, or tribal schools by means of electronic communication. The department may assess executive branch agencies, other than the board of regents of the University of Wisconsin System, for the costs of systems or devices relating to information technology or telecommunications that are developed, operated, or maintained under this subsection in accordance with a methodology determined by the department. The department may also charge any agency, authority, local governmental unit, entity in the private sector, or tribal school for such costs as a component of any services provided by the department to that agency, authority, local governmental unit, entity, or tribal school. The department may charge an individual for such costs as a component of any services provided by the department to that individual.

**(4)** Provide services authorized under sub. (3) to hospitals, as defined in s. 50.33 (2). Subsection (1) applies to the services provided under this subsection.

**(5)** Review and approve, approve with modifications, or disapprove any proposed contract for the purchase of materials, supplies, equipment, or contractual services relating to information technology or telecommunications by an executive branch agency, other than the board of regents of the University of Wisconsin System.

**History:** 2001 a. 16; 2003 a. 33 ss. 782 to 785c; Stats. 2003 s. 16.974; 2009 a. 302; 2011 a. 32; 2013 a. 20.

**16.975 Access to information.** The department shall withhold from access under s. 19.35 (1) all information submitted to the department by agencies, authorities, units of the federal government, local governmental units, entities in the private sector, or individuals for the purpose of processing. The department may not process such information without the consent of the agency, authority, unit, entity, or individual which submitted the information and may not withhold such information from the agency, authority, unit, entity, or individual or from any other person authorized by the agency, authority, unit, entity, or individual to have access to the information. The agency, authority, unit, entity, or individual submitting the information remains the custodian of the information while it is in the custody of the department and access to such information by that agency, authority, unit, entity, or individual or any other person shall be determined by that agency, authority, unit, entity, or individual and in accordance with law.

**History:** 1991 a. 39; 1995 a. 27; 2001 a. 16 s. 372; Stats. 2001 s. 22.11; 2003 a. 33 s. 786; Stats. 2003 s. 16.975; 2013 a. 20.

**16.976 Strategic plans for executive branch agencies.** **(1)** As a part of each proposed strategic plan submitted under s. 16.971 (2) (L), the department shall require each executive branch agency to address the business needs of the agency and to identify all proposed information technology development projects that serve those business needs, the priority for undertaking such projects, and the justification for each project, including the anticipated benefits of the project. Each proposed plan shall identify any changes in the functioning of the agency under the plan. In each even−numbered year, the plan shall include identification of any information technology development project that the agency plans to include in its biennial budget request under s. 16.42 (1).

**(2)** Each proposed strategic plan shall separately identify the initiatives that the executive branch agency plans to undertake from resources available to the agency at the time that the plan is submitted and initiatives that the agency proposes to undertake that would require additional resources.

**(3)** Following receipt of a proposed strategic plan from an executive branch agency, the department shall, before June 1, notify the agency of any concerns that the department may have regarding the plan and provide the agency with its recommendations regarding the proposed plan. The executive branch agency may submit modifications to its proposed plan in response to any recommendations.

**(4)** Before June 15, the department shall approve or disapprove the proposed plan in whole or in part.

**(5)** No executive branch agency, other than the board of regents of the University of Wisconsin System, may implement a new or revised information technology development project authorized under a strategic plan until the implementation is approved by the department in accordance with procedures prescribed by the department.

**(6)** The department shall consult with the joint committee on information policy and technology in providing guidance for planning by executive branch agencies.

**History:** 2001 a. 16; 2003 a. 33 ss. 787 to 791; Stats. 2003 s. 16.976; 2015 a. 55.

**16.977 Information technology portfolio management.** With the assistance of executive branch agencies, the department shall manage the information technology portfolio of state government in accordance with a management structure that includes all of the following:

**(1)** Criteria for selection of information technology assets to be managed.

**(2)** Methods for monitoring and controlling information technology development projects and assets.

**(3)** Methods to evaluate the progress of information technology development projects and the effectiveness of information technology systems, including performance measurements for the information technology portfolio.

**History:** 2001 a. 16; 2003 a. 33 ss. 792, 793; Stats. 2003 s. 16.977; 2015 a. 55.

**16.9785 Purchases of computers by teachers.** The department shall negotiate with private vendors to facilitate the purchase of computers and other educational technology, as defined in s. 24.60 (1r), by public, private, and tribal elementary and secondary school teachers for their private use. The department shall attempt to make available types of computers and other educational technology under this section that will encourage and assist teachers in becoming knowledgeable about the technology and its uses and potential uses in education.

**History:** 1995 a. 27, 225; 1997 a. 27; 2001 a. 16, s. 308; Stats. 2001 s. 22.19; 2003 a. 33 s. 796; Stats. 2003 s. 16.9785; 2009 a. 302.

**16.979 Telecommunications operations and planning.** **(2)** POWERS AND DUTIES. The department shall ensure maximum utility, cost−benefit and operational efficiency of all telecommunications systems and activities of this state, and those which interface with cities, counties, villages, towns, other states and the federal government. The department, with the assistance and cooperation of all other agencies, shall:

(a) Develop and maintain a statewide long−range telecommunications plan, which will serve as a major element for budget preparation, as guidance for technical implementation and as a means of ensuring the maximum use of shared systems by agen-

cies when this would result in operational or economic improvements or both.

(b) Develop policy, standards and technical and procedural guidelines to ensure a coordinated and cost−effective approach to telecommunications system acquisition and utilization.

(c) Maintain a comprehensive inventory of all state−owned or leased telecommunications equipment and services.

(d) Monitor overall state expenditures for telecommunications systems and prepare an annual financial report on such expenditures.

(e) Review the operation of all telecommunications systems of this state to ensure technical sufficiency, adequacy and consistency with goals and objectives.

(f) Perform the functions of agency telecommunications officer for those agencies with no designated focal point for telecommunications planning, coordination, technical review and procurement.

**(3)** PRIVATE COLLEGE AND UNIVERSITY PARTICIPATION IN STATE TELECOMMUNICATIONS NETWORK. The department may allow regionally accredited 4−year nonprofit colleges and universities that are incorporated in this state or that have their regional headquarters and principal place of business in this state to participate in any telecommunications network administered by the department.

**History:** 1977 c. 418; 1993 a. 246; 1997 a. 150; 2001 a. 16 ss. 375 to 380; Stats. 2001 s. 22.41; 2003 a. 33 ss. 797 to 800; Stats. 2003 s. 16.979.

## SUBCHAPTER VIII

## FEDERAL RESOURCE ACQUISITION

**16.98 Federal resource acquisition. (1)** The department shall engage in such activities as the secretary deems necessary to ensure the maximum utilization of federal resources by state agencies and institutions and other eligible organizations and units of government, including community development corporations as defined in s. 234.94 (2). The department shall acquire excess and surplus real and personal property and shall charge fees to recipients for costs of transportation, packing, crating, handling and program overhead, except that the department may transfer any excess or surplus personal property to the department of tourism, upon request of the department of tourism, at no cost, subject to any limitation or restriction imposed by federal law.

**(2)** The department may, in accordance with federal law, operate warehouses and otherwise provide for the temporary storage of property being transferred.

**(3)** All proceeds from the sale of land, buildings, supplies and equipment received under this section shall be credited to the appropriation under s. 20.505 (1) (im) or (ka). Such proceeds may be used for the purchase of lands and buildings or for construction or improvement of buildings for the purpose of storing and handling excess and surplus property.

**(4)** From the appropriations under s. 20.505 (1) (fo) and (kg), the department may provide grants to any organization with which the department contracts to operate the program under sub. (1).

**History:** 1971 c. 215; 1977 c. 29; 1979 c. 34 s. 2102 (1) (b), (c); 1983 a. 106; 1987 a. 27, 399; 1997 a. 27; 1999 a. 9; 2011 a. 32; 2015 a. 55.

**16.981 Transfer of appropriations.** On June 30 of each fiscal year, the department shall determine the amount within the appropriation under s. 20.505 (1) (im) by which total expenditures for the operation of warehouses and distribution centers under the federal resource acquisition program have exceeded income attributable to that operation under that appropriation as of that date. Immediately prior to the end of the fiscal year, the department shall transfer to the appropriation under s. 20.505 (1) (im) an amount equal to that excess from the unencumbered balances in the appropriation under s. 20.505 (1) (a). If the excess exceeds the unencumbered balance in any fiscal year, the department shall transfer all of the unencumbered balance. If the unencumbered balance exceeds the excess in any fiscal year, the department shall transfer an amount equal to the excess.

**History:** 1987 a. 27.

## SUBCHAPTER IX

## TECHNOLOGY FOR EDUCATIONAL ACHIEVEMENT

**16.99 Definitions.** In this subchapter:

**(1d)** "Charter school sponsor" means an entity described under s. 118.40 (2r) (b) that is sponsoring a charter school and the director under s. 118.40 (2x).

**(1m)** "Data line" means a data circuit that provides direct access to the Internet.

**(2g)** "Educational agency" means a school district, charter school sponsor, juvenile correctional facility, private school, tribal school, as defined in s. 115.001 (15m), cooperative educational service agency, technical college district, private college, public library system, public library board, public museum, the Wisconsin Center for the Blind and Visually Impaired, or the Wisconsin Educational Services Program for the Deaf and Hard of Hearing.

**(3)** "Educational technology" means technology used in the education or training of any person or in the administration of an elementary or secondary school and related telecommunications services.

**(3b)** "Juvenile correctional facility" means the Copper Lake School and the Lincoln Hills School.

**(3d)** "Political subdivision" means any city, village, town, or county.

**(3g)** "Private college" means a private, regionally accredited, 4−year, nonprofit college or university that is incorporated in this state or that has its regional headquarters and principal place of business in this state or a tribally controlled college in this state.

**(3j)** "Private school" has the meaning given in s. 115.001 (3r).

**(3m)** "Public library system" has the meaning given in s. 43.01 (5).

**(3p)** "Public museum" means a nonprofit or publicly owned museum located in this state that is accredited by the American Association of Museums or an educational center that is affiliated with such a museum.

**(4)** "Telecommunications" has the meaning given in s. 16.97 (10).

**(5)** "Universal service fund" means the trust fund established under s. 25.95.

**(6)** "Video link" means a 2−way interactive video circuit.

**History:** 1997 a. 27; 1999 a. 9 ss. 949 to 952, 2320 to 2322; 2001 a. 16, 57, 104, 105; 2003 a. 33 ss. 238n, 238p, 1036d to 1050d; Stats. 2003 s. 16.99; 2005 a. 344; 2009 a. 302; 2011 a. 32; 2015 a. 55.

**16.993 Technology for educational achievement in Wisconsin; departmental duties.** The department shall do all of the following:

**(1)** In cooperation with school districts, cooperative educational service agencies, the technical college system board, and the board of regents of the University of Wisconsin System, promote the efficient, cost−effective procurement, installation, and maintenance of educational technology by school districts, cooperative educational service agencies, technical college districts, and the University of Wisconsin System.

**(2)** Identify the best methods of providing preservice and in−service training for teachers related to educational technology.

**(3)** Enter into cooperative purchasing agreements under s. 16.73 (1) under which participating school districts and cooperative educational service agencies may contract for their professional employees to receive training concerning the effective use of educational technology.

**(4)** In cooperation with the board of regents of the University of Wisconsin System, the technical college system board, the department of public instruction and other entities, support the development of courses for the instruction of professional employees who are licensed by the state superintendent of public instruction concerning the effective use of educational technology.

**(5)** Provide telecommunications access to educational agencies under the program established under s. 16.997.

**(6)** No later than October 1 of each even−numbered year, submit a biennial report concerning the department's activities under this subchapter to the governor, and to the appropriate standing committees of the legislature under s. 13.172 (3).

**(7)** Purchase educational technology materials, supplies, equipment, and contractual services for school districts, cooperative educational service agencies, technical college districts, the board of regents of the University of Wisconsin System, and the University of Wisconsin−Madison under s. 16.72 (8), and establish standards and specifications for purchases of educational technology hardware and software by school districts, cooperative educational service agencies, technical college districts, and the board of regents of the University of Wisconsin System.

**(8)** Purchase educational technology equipment for use by school districts, cooperative educational service agencies, and public educational institutions in this state and permit the districts, agencies, and institutions to purchase or lease the equipment, with an option to purchase the equipment at a later date. This subsection does not require the purchase or lease of any educational technology equipment from the department.

**(10)** Coordinate an annual conference on educational technology, hosted by the governor, for elementary, secondary, and postsecondary educators and establish a schedule of fees for attending the conference, which fees may not exceed the actual costs incurred in conducting the conference. All fees collected under this subsection shall be credited to the appropriation account under s. 20.505 (4) (hc).

**History:** 1997 a. 27, 237; 1999 a. 9; 2001 a. 16, 104; 2003 a. 33 ss. 238pm, 1053d to 1063; Stats. 2003 s. 16.993; 2005 a. 25; 2011 a. 32; 2013 a. 20 ss. 2365m, 9448; 2013 a. 168 s. 21.

**16.994 Information technology block grants. (1)** COMPETITIVE GRANTS. In fiscal years 2015−16 and 2016−17, the department may annually award grants on a competitive basis to eligible school districts for the purpose of improving information technology infrastructure. In awarding grants under this section, the department shall give priority to applications for school districts in which the percentage of pupils who satisfy the income eligibility criteria under 42 USC 1758 (b) (1) for a free or reduced−price lunch is greater than in other applicant school districts. The department shall require an applicant for a grant under this section to provide all of the following:

(a) A description of the specific infrastructure, including any equipment, that the applicant intends to purchase with grant proceeds.

(b) The applicant's plan to purchase, install, and use the information technology infrastructure described in par. (a).

(c) A description of the applicant's readiness to use information technology infrastructure purchased with grant proceeds.

**(2)** ELIGIBLE SCHOOL DISTRICTS. A school district is eligible for a grant under this section if the school district's membership in the previous school year divided by the school district's area in square miles is 13 or less.

**(3)** MAXIMUM AWARDS. The total amount the department may award to an eligible school district under sub. (1) during the 2015−17 fiscal biennium may not exceed the following:

(a) If the membership of the eligible school district is fewer than 750 pupils, $30,000.

(b) If the membership of the eligible school district is 750 pupils to 1,500 pupils, $40 multiplied by the school district's membership.

(c) If the membership of the eligible school district is more than 1,500 pupils, $60,000.

**(4)** FUNDING LIMITATION. The department may not award grants under this section that total more than $7,500,000 in any fiscal year.

**NOTE: This section is repealed eff. 7−1−17 by 2015 Wis. Act 55.**

**History:** 2015 a. 55.

**16.995 Educational technology infrastructure financial assistance. (1)** FINANCIAL ASSISTANCE AUTHORIZED. The department may provide financial assistance under this section to school districts from the proceeds of public debt contracted under s. 20.866 (2) (zc) and to public library boards from the proceeds of public debt contracted under s. 20.866 (2) (zcm). Financial assistance under this section may be used only for the purpose of upgrading the electrical wiring of school and library buildings in existence on October 14, 1997, and installing and upgrading computer network wiring. The department may not provide any financial assistance under this section after July 26, 2003.

**(2)** FINANCIAL ASSISTANCE APPLICATIONS, TERMS, AND CONDITIONS. The department shall establish application procedures for, and the terms and conditions of, financial assistance under this section. The department shall make a loan to a school district or public library board, or to a municipality on behalf of a public library board, in an amount equal to 50 percent of the total amount of financial assistance for which the department determines the school district or public library board is eligible and provide a grant to the school district or public library board for the remainder of the total. The terms and conditions of any financial assistance under this section may include the provision of professional building construction services under s. 16.85 (15). The department shall determine the interest rate on loans under this section. The interest rate shall be as low as possible but shall be sufficient to fully pay all interest expenses incurred by the state in making the loans and to provide reserves that are reasonably expected to be required in the judgment of the department to ensure against losses arising from delinquency and default in the repayment of the loans. The term of a loan under this section may not exceed 10 years.

**(3)** REPAYMENT OF LOANS. The department shall credit all moneys received from school districts for repayment of loans under this section to the appropriation account under s. 20.505 (4) (ha). The department shall credit all moneys received from public library boards or from municipalities on behalf of public library boards for repayment of loans under this section to the appropriation account under s. 20.505 (4) (hb).

**(3m)** PUBLIC DEBT REPAYMENT. To the extent that sufficient moneys for the provision of educational telecommunications access under s. 16.997 are available in the appropriation account under s. 20.505 (4) (mp) after payment of the administrative expenses specified in s. 20.505 (4) (mp), the department shall use those available moneys to reimburse s. 20.505 (4) (es) and (et) for the payment of principal and interest costs incurred in financing educational technology infrastructure financial assistance under this section and to make full payment of the amounts determined by the building commission under s. 13.488 (1) (m).

**(4)** FUNDING FOR FINANCIAL ASSISTANCE. The department, subject to the limits of s. 20.866 (2) (zc) and (zcm), may request that the building commission contract public debt in accordance with ch. 18 to fund financial assistance under this section.

**History:** 1997 a. 27, 41; 1999 a. 9; 2001 a. 16, 104; 2003 a. 33 ss. 238q, 1068d to 1072d; Stats. 2003 s. 16.995; 2005 a. 25.

**16.996 Educational technology teacher training grants. (1)** PURPOSE. The department shall annually award

grants to eligible consortia of school districts for the costs of training teachers to use educational technology.

**(2)** ELIGIBLE CONSORTIA. A consortium of school districts is eligible for a grant under this section if all of the following apply:

(a) The consortium consists of 3 or more school districts.

(b) Each school district's membership in the previous school year divided by that school district's area in square miles is 13 or less.

(c) The consortium applies for a grant under this section.

**(3)** GRANT AMOUNT. In any year the department awards grants under this section, subject to sub. (4), the department shall pay to each eligible consortium the sum of the following amounts:

(a) For each school district in the consortium that had a membership of less than 750 pupils in the previous year, $7,500.

(b) For each school district in the consortium that had a membership of 750 pupils to 1,500 pupils in the previous year, $10 multiplied by the school district's membership in the previous year.

(c) For each school district in the consortium that had a membership of more than 1,500 pupils in the previous year, $15,000.

**(4)** FUNDING. (a) The department may not award grants under this section that total more than $1,500,000 in any fiscal year.

(b) If, in any fiscal year, $1,500,000 is insufficient to pay the full amount under sub. (3), the department shall prorate the payments among the eligible consortia.

**History:** 2015 a. 55.

**16.997 Educational telecommunications access program. (1)** Except as provided in s. 196.218 (4t), the department shall promulgate rules establishing an educational telecommunications access program to provide educational agencies with access to data lines and video links.

**(2)** The rules promulgated under sub. (1) shall do all of the following:

(a) Allow an educational agency to make a request to the department for access to data lines and video links.

(b) Establish eligibility requirements for an educational agency to participate in the program established under sub. (1) and to receive additional telecommunications access under s. 16.998, including a requirement that a charter school sponsor use data lines and video links to benefit pupils attending the charter school and a requirement that Internet access to material that is harmful to children, as defined in s. 948.11 (1) (b), is blocked on the computers of juvenile correctional facilities that are served by data links and video links subsidized under this section.

(c) Establish specifications for data lines and video links for which access is provided to an educational agency under the program established under sub. (1) or for which additional access is provided to an educational agency under s. 16.998.

(d) Require an educational agency to pay the department not more than $250 per month for each data line or video link that is provided to the educational agency under the program established under sub. (1), except that the charge may not exceed $100 per month for each data line or video link that relies on a transport medium that operates at a speed of 1.544 megabits per second.

(e) Include the protections specified in s. 196.209 (4) (a) and (b).

(f) Ensure that juvenile correctional facilities that receive access under this section to data lines and video links or that receive additional access under s. 16.998 to data lines, video links, and bandwidth use those data lines and video links and that bandwidth only for educational purposes.

**(2c)** The department shall develop criteria to use to evaluate whether to provide more than one data line and video link to an educational agency. The department shall include in the criteria an educational agency's current bandwidth, equipment, and readiness, and the available providers and any other economic development in the geographic area that the educational agency serves.

**(2g)** An educational agency that is provided access to a data line under the program established under sub. (1) or to an additional data line under s. 16.998 may not do any of the following:

(a) Provide access to the data line to any business entity, as defined in s. 13.62 (5), unless the business entity complies with all of the following:

1. The business entity is transmitting an event sponsored by the educational agency.

2. The business entity has the permission of the educational agency to record and transmit the event.

2g. The access to the data line by the business entity is through the Internet.

2r. All transmissions through the data line originate or terminate at the site of an educational agency or other governmental agency that is an authorized user of the data line.

3. The business entity reimburses the department for its proportionate share of the cost of the data line used to transmit the event.

(b) Request access to an additional data line for purposes of providing access to bandwidth to a political subdivision under a shared service agreement under sub. (2r) (a).

**(2r)** (a) A public library board that is provided access to a data line under the program established under sub. (1) or to an additional data line under s. 16.998 may enter into a shared service agreement with a political subdivision that provides the political subdivision with access to any excess bandwidth on the data line that is not used by the public library board, except that a public library board may not sell, resell, or transfer in consideration for money or anything of value to a political subdivision access to any excess bandwidth. A shared service agreement under this paragraph is not valid unless the agreement allows the public library board to cancel the agreement at any time after providing notice to the political subdivision.

(b) A political subdivision that obtains access to bandwidth under a shared service agreement under par. (a) may not receive compensation for providing any other person with access to the bandwidth.

(c) A public library board shall provide the department with written notice within 30 days after entering into or modifying a shared service agreement under par. (a).

**(3)** The department shall prepare an annual report on the status of providing data lines and video links that are requested under sub. (2) (a) and the impact on the universal service fund of any payment under contracts under s. 16.974.

**(4)** If the federal communications commission promulgates or modifies rules that provide rate discounts for telecommunications services to educational agencies under 47 USC 254, the governor shall submit a report to the joint committee on finance that includes any recommended changes to statutes or rules with respect to funding the program established under sub. (1).

**(7)** From the appropriation under s. 20.505 (4) (s), the department shall award $25,000 annually in grants to consortia of school districts that meet all of the following criteria for the purpose of developing and implementing a technology−enhanced high school curriculum:

(a) The curriculum is developed for and implemented through streaming video conferencing and online course work.

(b) The consortium includes high schools from at least 8 school districts.

(c) The participating school districts collectively contribute an amount equal to at least the amount of the grant received in the same fiscal year.

(d) The curriculum is made available to each high school participating in the consortium.

**History:** 1999 a. 9 ss. 2318, 2323 to 2329; 2001 a. 16; 2003 a. 33 ss. 238r, 1073d to 1088d; Stats. 2003 s. 16.997; 2005 a. 25, 344; 2007 a. 20, 97; 2009 a. 28; 2015 a. 55.

**16.998 Educational telecommunications; additional access.** An educational agency that is eligible for a rate discount for telecommunications services under 47 USC 254 may request data lines, video links, and bandwidth access that is in addition to what is provided under the program under s. 16.997 (1). The department shall apply for aid under 47 USC 254 to cover the costs of the data lines, video links, and bandwidth access that are provided under this section and shall credit any aid received to the appropriation account under s. 20.505 (4) (mp). To the extent that the aid does not fully cover those costs, the department shall require an educational agency to pay the department a monthly fee that is sufficient to cover those costs and shall credit any monthly fee received to the appropriation account under s. 20.505 (4) (Lm).

**History:** 2005 a. 25.