



2009 ASSEMBLY BILL 888

March 23, 2010 - Introduced by Representatives GOTTLIEB, KERKMAN, SUDER, VOS, RHOADES, LEMAHIEU, KAUFERT, TOWNSEND and BROOKS, cosponsored by Senators HOLPERIN, KREITLOW, KAPANKE, HARSDFORF, SCHULTZ, COWLES and LEIBHAM. Referred to Committee on Labor.

1 **AN ACT to amend** 16.75 (1) (a) 1. and 16.855 (1); and **to create** 16.75 (10r),
2 16.856, 66.0502 and 230.144 of the statutes; **relating to:** employment
3 eligibility verification requirements for state and local government employees
4 and state procurement and construction contracts.

Analysis by the Legislative Reference Bureau

This bill makes the following changes to state procurement law and to state government and local government employment practices:

State procurement

Under current law, the Department of Administration (DOA), other agencies to which DOA has delegated the authority, the legislature, the judicial branch, and authorities may purchase all necessary materials and contractual services. Current law also generally authorizes DOA to contract for construction work when the project cost is estimated to exceed \$40,000. With some exceptions, such purchases or contracts must be awarded to the lowest bidder.

This bill creates a new exception to the lowest-bidder award by prohibiting the state from purchasing or contracting for materials or services, including construction work, with an employer that does not verify, by using the Federal Employment Eligibility Verification Program (Federal E-Verify Program), that all of its employees are eligible to work in the United States or that employs an individual after the Federal E-Verify Program identifies that the individual is not eligible to work in the United States. The Federal E-Verify Program is a system operated by

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the federal Department of Homeland Security and the federal Social Security Administration that allows an employer to enroll in the system and verify that its employees are eligible to work in the United States. If the state discovers that a contract into which it has entered violates this prohibition, the state must terminate the contract.

State government and local government employment practices

This bill provides that a state government agency or local governmental unit that intends to hire an employee after the bill's effective date must verify the individual's identity under the Federal E-Verify Program. A state government agency or local governmental unit may not offer employment to any individual who is identified under the Federal E-Verify Program as ineligible to work in the United States. The bill further provides that, before July 1, 2011, each state government agency and local governmental unit must verify the identity of all of its employees under the Federal E-Verify Program. If a state government agency or local governmental unit determines that an employee is identified under the Federal E-Verify Program as ineligible to work in the United States, the local governmental unit must discharge the employee.

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

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

1 **SECTION 1.** 16.75 (1) (a) 1. of the statutes, as affected by 2009 Wisconsin Act 136,
2 is amended to read:
3 16.75 (1) (a) 1. All orders awarded or contracts made by the department for all
4 materials, supplies, equipment, and contractual services to be provided to any
5 agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3t),
6 (6), (7), (8), (9), (10e), ~~and (10m), and (10r)~~ and ss. 16.705 (1r), 16.73 (4) (a), 16.751,
7 16.754, 16.964 (8), 50.05 (7) (f), 153.05 (2m) (a), and 287.15 (7), shall be awarded to
8 the lowest responsible bidder, taking into consideration life cycle cost estimates
9 under sub. (1m), when appropriate, the location of the agency, the quantities of the
10 articles to be supplied, their conformity with the specifications, and the purposes for
11 which they are required and the date of delivery.

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1 **SECTION 2.** 16.75 (10r) of the statutes is created to read:

2 16.75 (10r) (a) In this subsection, “federal employment eligibility verification
3 program” means the system operated by the federal department of homeland
4 security and the federal social security administration that allows an employer to
5 enroll in the system and verify that its employees are eligible to work in the United
6 States.

7 (b) The department, a designated purchasing agent under s. 16.71, an agency
8 making purchases under s. 16.74, and any authority may not enter into a contract
9 or order for the purchase of materials, supplies, equipment, or contractual services
10 with any of the following:

11 1. Except as provided in par. (e), a person that is an employer who is not enrolled
12 in the federal employment eligibility verification program.

13 2. A person that is an employer who is knowingly employing an individual who
14 has been identified by the federal employment eligibility verification program as
15 ineligible to work in the United States.

16 (c) If the department, a designated purchasing agent under s. 16.71, an agency
17 making purchases under s. 16.74, or any authority discovers that it has entered into
18 a contract or order that violates par. (b), it shall terminate the contract or order
19 without liability for the uncompleted portion or any materials or services purchased
20 or paid for by the employer for use in completing the contract or order.

21 (d) All contracts entered into under this section must contain written
22 notification of the requirements in this subsection and a place for the employer who
23 is awarded the contract to sign indicating that he or she is in compliance with the
24 requirements.

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1 (e) Paragraph (b) 1. does not apply if the federal employment eligibility
2 verification program is discontinued.

3 **SECTION 3.** 16.855 (1) of the statutes is amended to read:

4 16.855 (1) The department shall let by contract to the lowest qualified
5 responsible bidder all construction work when the estimated construction cost of the
6 project exceeds \$40,000, except for construction work authorized under s. 16.858 and
7 except as provided in sub. (10m) or s. 13.48 (19) or 16.856. If a bidder is not a
8 Wisconsin firm and the department determines that the state, foreign nation or
9 subdivision thereof in which the bidder is domiciled grants a preference to bidders
10 domiciled in that state, nation or subdivision in making governmental purchases,
11 the department shall give a preference over that bidder to Wisconsin firms, if any,
12 when awarding the contract, in the absence of compelling reasons to the contrary.
13 The department may enter into agreements with states, foreign nations and
14 subdivisions thereof for the purpose of implementing this subsection.

15 **SECTION 4.** 16.856 of the statutes is created to read:

16 **16.856 Employment eligibility verification.** (1) In this section, “federal
17 employment eligibility verification program” has the meaning given in s. 16.75 (10r)
18 (a).

19 (2) The department may not let any construction work by contract under s.
20 16.855 (1) to any of the following persons:

21 (a) Except as provided in sub. (5), a person that is an employer who is not
22 enrolled in the federal employment eligibility verification program.

23 (b) A person that is an employer who is knowingly employing an individual who
24 has been identified by the federal employment eligibility verification program as
25 ineligible to work in the United States.

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1 **(3)** If the department discovers that it has let any construction work by a
2 contract that violates sub. (2), it shall terminate the contract without liability for the
3 uncompleted portion or any materials or services purchased or paid for by the
4 employer for use in completing the contract.

5 **(4)** All contracts entered into under s. 16.855 (1) must contain written
6 notification of the requirements in this section and a place for the employer who is
7 awarded the contract to sign indicating that he or she is in compliance with the
8 requirements.

9 **(5)** Subsection (2) (a) does not apply if the federal employment eligibility
10 verification program is discontinued.

11 **SECTION 5.** 66.0502 of the statutes is created to read:

12 **66.0502 Federal employment eligibility verification program. (1)**

13 DEFINITIONS. In this section:

14 (a) "Federal employment eligibility verification program" has the meaning
15 given in s. 16.75 (10r) (a).

16 (b) "Local governmental unit" has the meaning given in s. 66.0131 (1) (a).

17 **(2) VERIFICATION REQUIREMENTS.** (a) A local governmental unit that intends to
18 hire an employee on or after the effective date of this paragraph [LRB inserts
19 date], shall verify the individual's identity under the federal employment eligibility
20 verification program. A local governmental unit may not offer employment to any
21 individual who is identified under the federal employment eligibility verification
22 program as ineligible to work in the United States.

23 (b) Before July 1, 2011, each local governmental unit shall verify the identity
24 of all of its employees under the federal employment eligibility verification program.
25 If a local governmental unit determines that an employee is identified under the

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1 federal employment eligibility verification program as ineligible to work in the
2 United States, the local governmental unit shall discharge the employee.

3 (3) This section does not apply if the federal employment eligibility verification
4 program is discontinued.

5 **SECTION 6.** 230.144 of the statutes is created to read:

6 **230.144 Federal employment eligibility verification program.** (1) In
7 this section, “federal employment eligibility verification program” has the meaning
8 given in s. 16.75 (10r) (a).

9 (2) Beginning on the effective date of this subsection [LRB inserts date], an
10 agency shall verify under the federal employment eligibility verification program the
11 identity of each individual that it intends to appoint to a position. An agency may
12 not offer employment to any individual who is identified under the federal
13 employment eligibility verification program as ineligible to work in the United
14 States.

15 (3) Before July 1, 2011, each agency shall verify under the federal employment
16 eligibility verification program the identity of each of its employees. If an agency
17 determines that an employee is identified under the federal employment eligibility
18 verification program as ineligible to work in the United States, the agency shall
19 discharge the employee.

20 (4) This section does not apply if the federal employment eligibility verification
21 program is discontinued.

22 **SECTION 7. Initial applicability.**

23 (1) STATE PROCUREMENT AND CONSTRUCTION CONTRACTS. The treatment of
24 sections 16.75 (10r) and 16.856 of the statutes first applies to a contract or order that
25 is entered into on the effective date of this subsection.

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1 (2) COLLECTIVE BARGAINING AGREEMENTS. The treatment of sections 66.0502 and
2 230.144 of the statutes first applies to an employee who is affected by a collective
3 bargaining agreement that contains provisions inconsistent with this act on the day
4 on which the collective bargaining agreement expires or is extended, modified, or
5 renewed, whichever occurs first.

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(END)