

qualified disabled that individuals submitted to the commissioner of human rights for approval. Neither the council nor an agency listed in section 473.143, subdivision 1, shall execute the contract or agreement until the affirmative action plan has been approved by the commissioner of human rights. Receipt of a certificate of compliance from the commissioner of human rights signifies that a business has an approved affirmative action plan. A certificate is valid for two years. Section 363.073 governs revocation of certificates. The rules adopted by the commissioner of human rights under section 363.074 apply to this section.

(b) This paragraph applies to a contract for goods or services in excess of \$100,000 to be entered into between the council or an agency listed in section 473.143, subdivision 1, and a business that is not subject to paragraph (a), but that has more than 40 full-time employees on a single working day during the previous 12 months in the state where the business has its primary place of business. The council or the agency may not execute a contract or agreement with a business covered by this paragraph unless the business has a certificate of compliance issued by the commissioner under paragraph (a) or the business certifies to the contracting agency that it is in compliance with federal affirmative action requirements.

Sec. 2. **EFFECTIVE DATE; APPLICATION.**

Section 1 is effective the day following final enactment and applies in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

Presented to the governor April 10, 1998

Signed by the governor April 20, 1998, 11:23 a.m.

CHAPTER 386—S.F.No. 726

An act relating to state agencies; modifying procurement procedures; amending Minnesota Statutes 1996, sections 3.225, subdivision 2; 3.732, subdivision 6; 3.922, subdivision 5; 3C.10, subdivision 3; 4A.04; 6.551; 11A.24, subdivision 4; 12.221, subdivision 5; 15.054; 15.061; 16A.101; 16A.85, subdivision 1; 16B.181; 17.1015; 41A.023; 43A.23, subdivision 1; 44A.01, subdivision 1; 45.0291; 84.025, subdivision 7; 84.026; 84.0845; 85A.02, subdivisions 3, 16, and 18; 103F.515, subdivision 3; 116.03, subdivision 2; 116J.035, subdivision 1; 116J.402; 116J.58, subdivision 2; 116J.68, subdivision 2; 116J.966, subdivision 1; 124.14, subdivision 1; 126.151, subdivision 2; 129C.10, subdivision 7; 136A.06; 136A.16, subdivision 1; 136A.29, subdivision 6; 136F.23; 136F.56, subdivision 5; 136F.581, subdivision 3; 136F.66; 136F.72, subdivision 3; 136F.96; 137.35, subdivisions 1, 2, and 3; 144.0742; 144.95, subdivision 5; 161.315, subdivision 4; 161.32, by adding subdivisions; 161.321, subdivisions 1, 2, 5, 6, and 7; 161.41, subdivision 2; 179A.23; 198.35, subdivision 1; 216C.02, subdivision 1; 237.51, subdivision 5a; 241.0221, subdivision 6; 241.27, subdivision 2; 246.36; 246.57, subdivisions 1 and 6; 256B.031, subdivision 1; 256B.04, subdivisions 14 and 15; 298.2211, subdivision 4; 349A.06, subdivision 1; 349A.07, subdivision 6; 352.03, subdivisions 6 and 16; 354.06, subdivision 2a; 354.07, subdivision 7; 356A.06, subdivision 7; 446A.12, subdivision 5; 462A.18, subdivision 2; 471.345, subdivision 8; 473.142; 473.556, subdivision 14; 480.09, subdivision 1; and 626.90, subdivision 2; Minnesota Statutes 1997 Supplement, sections 3.225, subdivision 1; 16A.15, subdivision 3; 16B.465, subdivision 7; 16E.07, subdivision 9; 17.03, subdivision 12; 41D.03, subdivision 7; 61B.21, subdivision 1; 85A.02, subdivision 5b; 121.1113, subdivision 2;

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136A.40; 138.35, subdivision 1b; 179A.03, subdivision 14; 216D.03, subdivision 2; 241.277, subdivision 2; 256B.19, subdivision 2a; 256D.03, subdivision 6; 353.03, subdivision 3a; 363.073, subdivision 1; and 626.91, subdivision 2; proposing coding for new law in Minnesota Statutes, chapters 16C; and 174; repealing Minnesota Statutes 1996, sections 16B.06; 16B.07; 16B.08; 16B.09; 16B.101; 16B.102; 16B.103; 16B.123; 16B.13; 16B.14; 16B.15; 16B.16; 16B.167; 16B.17; 16B.175; 16B.18, subdivisions 1, 2, and 4; 16B.185; 16B.19; 16B.20, subdivisions 1 and 3; 16B.21; 16B.22; 16B.226; 16B.227; 16B.23; 16B.28; 16B.29; and 16B.89; Minnesota Statutes 1997 Supplement, sections 16B.18, subdivision 3; 16B.20, subdivision 2; and 16B.482.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

PROCUREMENT REFORM

Section 1. Minnesota Statutes 1996, section 15.054, is amended to read:

15.054 PUBLIC EMPLOYEES NOT TO PURCHASE MERCHANDISE FROM GOVERNMENTAL AGENCIES; EXCEPTIONS; PENALTY.

No officer or employee of the state or any of its political subdivisions shall sell or procure for sale or possess or control for sale to any other officer or employee of the state or the subdivision, as appropriate, any property or materials owned by the state or subdivision except pursuant to conditions provided in this section. Property or materials owned by the state or a subdivision, except real property, and not needed for public purposes, may be sold to an employee of the state or the subdivision after reasonable public notice at a public auction or by sealed bid if the employee is the highest responsible bidder and response, if the employee is not directly involved in the auction or process pertaining to the administration and collection of sealed bid process responses. Requirements for reasonable public notice may be prescribed by other law or ordinance so long as at least one week's published or posted notice is specified. A state An employee of the state or a political subdivision may purchase no more than one motor vehicle from the state in any 12-month period. A person violating the provisions of this section is guilty of a misdemeanor. This section shall not apply to the sale of property or materials acquired or produced by the state or subdivision for sale to the general public in the ordinary course of business. Nothing in this section shall prohibit an employee of the state or a political subdivision from selling or possessing for sale public property if the sale or possession for sale is in the ordinary course of business or normal course of the employee's duties.

Sec. 2. Minnesota Statutes 1996, section 16B.181, is amended to read:

16B.181 PURCHASES FROM CORRECTIONS INDUSTRIES.

Subdivision 1. **DEFINITIONS.** As used in this section:

(1) "public entity" or "public entities" includes the state and an agency, department, or institution of the state, any governmental unit as defined in section 471.59, the state legislative and judicial branches, and state colleges and universities; and

(2) "items" includes articles, products, supplies, and services.

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Subd. 2. PUBLIC ENTITIES; PURCHASES FROM CORRECTIONS INDUSTRIES. (a) The commissioner of corrections, in consultation with the commissioner of administration, shall prepare updated lists of the items available for purchase from department of corrections industries and annually forward a copy of the most recent list to all public entities within the state. A public entity that is supported in whole or in part with funds from the state treasury shall may purchase items directly from corrections industries those items that are comparable in price, quality, and delivery time to items available from other vendors. An item is comparable in price if the price is no more than five percent higher than the lowest bid price. The bid solicitation process is not required for these purchases.

(b) The commissioner of administration shall develop a contract pursuant to section 16B.09, or contracts to enable public entities to purchase items directly from corrections industries. The commissioner of administration, in consultation with the commissioner of corrections, shall determine the fair market price for listed items. In determining fair market price, the commissioner shall use competitive bidding, or shall consider open bid prices in previous years for similar products which meet the needs of the public entity. The commissioner of administration shall require that all requests for bids or proposals, for items provided by corrections industries, be forwarded to the commissioner of corrections to enable corrections industries to submit bids. The commissioner of corrections shall consult with the commissioner of administration prior to introducing new products to the state agency market.

(c) No public entity may evade the intent of this section by adopting slight variations in specifications, when Minnesota corrections industry items meet the reasonable needs and specifications of the public entity.

(d) As part of its ongoing audit process, the legislative auditor is requested to ensure that state agencies are in compliance with this section. The commissioners of administration and corrections shall develop annual performance measures outlining goals to maximize inmate work program participation. The commissioners of administration and corrections shall appoint cochairs for a task force whose purpose is to determine additional methods to achieve the performance goals for public entity purchasing. The task force shall include representatives from the Minnesota house of representatives, Minnesota senate, the Minnesota state colleges and universities, University of Minnesota, Minnesota League of Cities, Minnesota Association of Counties, and administrators with purchasing responsibilities from the Minnesota state departments of corrections, public safety, finance, transportation, natural resources, human services, health, and economic security.

(e) The commissioners of administration and corrections shall appoint a joint task force to explore additional methods that support the philosophy of providing a substantial market opportunity to correctional industries that maximizes inmate work opportunities. The task force shall develop a plan and prepare a set of criteria with which to evaluate the effectiveness of the recommendations and initiatives in the plan. By February 15, 1997, the task force shall report to the chairs of the senate and house of representatives committees having jurisdiction over criminal justice funding. If performance goals for public entity purchasing are not achieved in two consecutive fiscal years, public entities shall purchase items available from corrections industries. The commissioner of administration shall be responsible for notifying public entities of this requirement.

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Sec. 3. [16C.02] DEFINITIONS.

Subdivision 1. **APPLICABILITY.** For purposes of this chapter, the following terms have the meanings given them, unless the context clearly indicates otherwise.

Subd. 2. **AGENCY.** "Agency" means any state officer, employee, board, commission, authority, department, entity, or organization of the executive branch of state government.

Unless specifically provided elsewhere in this chapter, agency does not include the Minnesota state colleges and universities.

Subd. 3. **AWARD.** "Award" means a commissioner's written acceptance of a bid or proposal to provide goods, services, or utilities.

Subd. 4. **BEST VALUE.** "Best value" describes a result intended in the acquisition of all goods and services. Price must be one of the evaluation criteria when acquiring goods and services. Other evaluation criteria may include, but are not limited to, environmental considerations, quality, and vendor performance.

Subd. 5. **COMMISSIONER.** "Commissioner" means the commissioner of administration.

Subd. 6. **CONTRACT.** "Contract" means any written instrument or electronic document containing the elements of offer, acceptance, and consideration to which an agency is a party.

Subd. 7. **FORMAL SOLICITATION.** "Formal solicitation" means a solicitation which requires a sealed response.

Subd. 8. **GOODS.** "Goods" means all types of personal property including commodities, materials, supplies, and equipment.

Subd. 9. **INFORMAL SOLICITATION.** "Informal solicitation" means a solicitation which does not require a sealed response.

Subd. 10. **LEASE.** "Lease" means a contract conveying from one entity to another the use of real or personal property for a designated period of time in return for payment or other consideration.

Subd. 11. **REQUEST FOR BID OR RFB.** "Request for bid" or "RFB" means a solicitation in which the terms, conditions, and specifications are described and responses are not subject to negotiation.

Subd. 12. **REQUEST FOR PROPOSAL OR RFP.** "Request for proposal" or "RFP" means a solicitation in which it is not advantageous to set forth all the actual, detailed requirements at the time of solicitation and responses are subject to negotiation.

Subd. 13. **RESIDENT VENDOR.** "Resident vendor" means a person, firm, or corporation authorized to conduct business in the state of Minnesota on the date a solicitation for a contract is first advertised or announced. It includes a foreign corporation duly authorized to engage in business in Minnesota.

Subd. 14. **RESPONSE.** "Response" means the offer received from a vendor in response to a solicitation. A response includes submissions commonly referred to as "offers," "bids," "quotes," or "proposals."

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Subd. 15. **SEALED.** "Sealed" means a method determined by the commissioner to prevent the contents being revealed or known before the deadline for submission of responses.

Subd. 16. **SERVICE CONTRACT.** "Service contract" means a contract for any nonprofessional or technical services.

Subd. 17. **SERVICES.** "Services" means, unless otherwise indicated, both professional or technical services and service performed under a service contract.

Subd. 18. **SINGLE SOURCE.** "Single source" means an acquisition where, after a search, only one supplier is determined to be reasonably available for the required product, service, or construction item.

Subd. 19. **SOLICITATION.** "Solicitation" means the process used to communicate procurement requirements and to request responses from interested vendors. A solicitation may be, but is not limited to, a request for bid and request for proposal.

Sec. 4. [16C.03] COMMISSIONER'S AUTHORITY; POWERS AND DUTIES.

Subdivision 1. **SCOPE.** The commissioner's authority in this section applies to an agency and is subject to other provisions of this chapter and chapter 16B. Unless otherwise provided, the provisions in this chapter and chapter 16B do not apply to the Minnesota state colleges and universities.

Subd. 2. **RULEMAKING AUTHORITY.** Subject to chapter 14, the commissioner may adopt rules, consistent with this chapter and chapter 16B, relating to the following topics:

(1) solicitations and responses to solicitations, bid security, vendor errors, opening of responses, award of contracts, tied bids, and award protest process;

(2) contract performance and failure to perform;

(3) authority to debar or suspend vendors, and reinstatement of vendors;

(4) contract cancellation; and

(5) procurement from rehabilitation facilities.

Subd. 3. **ACQUISITION AUTHORITY.** The commissioner shall acquire all goods, services, and utilities needed by agencies. The commissioner shall acquire goods, services, and utilities by requests for bids, requests for proposals, or other methods provided by law, unless a section of law requires a particular method of acquisition to be used. The commissioner shall make all decisions regarding acquisition activities. The determination of the acquisition method and all decisions involved in the acquisition process, unless otherwise provided for by law, shall be based on best value which includes an evaluation of price and may include other considerations including, but not limited to, environmental considerations, quality, and vendor performance. A best value determination must be based on the evaluation criteria detailed in the solicitation document. If criteria other than price are used, the solicitation document must state the relative importance of price and other factors. Unless it is determined by the commissioner that an alternative solicitation method provided by law should be used to determine best value, a request for

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bid must be used to solicit formal responses for all building and construction contracts. Any or all responses may be rejected. When using the request for bid process, the bid must be awarded to the lowest responsive and responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract or purchase is intended, the status and capability of the vendor, and other considerations imposed in the request for bids. The commissioner may decide which is the lowest responsible bidder for all purchases and may use the principles of life-cycle costing, where appropriate, in determining the lowest overall bid. The duties set forth in this subdivision are subject to delegation pursuant to this section.

Subd. 4. CONTRACTING AUTHORITY. The commissioner shall conduct all contracting by, for, and between agencies and perform all contract management and review functions for contracts, except those functions specifically delegated to be performed by the contracting agency, the attorney general, or otherwise provided for by law.

Subd. 5. AMENDMENTS, CANCELLATIONS, AND APPEALS. The commissioner shall, in addition to the duties set forth in subdivisions 3 and 4, make all decisions regarding amendments, cancellations, and appeals of all agency acquisition activities unless the duties are delegated pursuant to this section.

Subd. 6. LEASE AND INSTALLMENT PURCHASES. The commissioner is authorized to enter into lease purchases or installment purchases for periods not exceeding the anticipated useful life of the items acquired unless otherwise prohibited by law.

Subd. 7. LEASE, RENTAL, AND INSTALLMENT AGREEMENTS. The commissioner is authorized to enter into lease, lease purchase, rental, or installment agreements for the use or acquisition, whichever is applicable, of real or personal property.

Subd. 8. POLICY AND PROCEDURES. The commissioner is authorized to issue policies, procedures, and standards applicable to all acquisition activities by and for agencies.

Subd. 9. EMPLOYEE PURCHASING. The commissioner is authorized to enter into contracts under which a vendor agrees to sell computer equipment and related products to state employees, for their own use related to work, at contract prices. Employees may make only one purchase under this subdivision. Under no circumstances shall the state be liable for purchases made under this subdivision. The provisions of section 43A.38, subdivisions 4 and 5, clause (a), do not apply to this subdivision.

Subd. 10. COOPERATIVE PURCHASING. The commissioner is authorized to enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with one or more other states or governmental units, as described in section 471.59, subdivision 1. The commissioner is authorized to enter into cooperative purchasing agreements for the purchase of goods, services, and utilities with health care facilities that are required to provide indigent care.

Subd. 11. SURPLUS PROPERTY. The commissioner is authorized to purchase, accept, transfer, warehouse, sell, distribute, or dispose of surplus property in accordance with state and federal rules and regulations. The commissioner may charge a fee to cover any expenses incurred in connection with any of these acts.

Subd. 12. CENTRAL DISTRIBUTION CENTER. The commissioner is authorized to provide and manage a central distribution center for federal and state surplus per-

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sonal property, as defined in section 16C.23, and may provide and manage a warehouse facility.

Subd. 13. CENTRAL STORES. The commissioner is authorized to provide agencies with supplies and equipment and operate all central stores and supply rooms serving more than one agency.

Subd. 14. PROVISION OF GOODS, SERVICES, AND UTILITIES. The commissioner has the authority to provide goods, services, and utilities under this chapter to state legislative and judicial branch agencies, political subdivisions, the Minnesota state colleges and universities, the University of Minnesota, and federal government agencies.

Subd. 15. REIMBURSEMENT FOR GOODS, SERVICES, AND UTILITIES. The commissioner is authorized to charge a fee to cover costs and expenses associated with operating a revolving fund or an enterprise fund to acquire goods, services, and utilities. The fees are appropriated to the commissioner to administer and manage the programs and facilities covered under this section.

Subd. 16. DELEGATION OF DUTIES. The commissioner may delegate duties imposed by this chapter to the head of an agency and to any subordinate of the agency head. Delegated duties shall be exercised in the name of the commissioner and under the commissioner's direct supervision and control. A delegation of duties may include, but is not limited to, allowing individuals within agencies to acquire goods, services, and utilities within dollar limitations and for designated types of acquisitions. Delegation of contract management and review functions must be filed with the secretary of state and may not, except with respect to delegations within the department of administration, exceed two years in duration. The commissioner may withdraw any delegation at the commissioner's sole discretion.

Sec. 5. [16C.04] ETHICAL PRACTICES AND CONFLICT OF INTEREST.

Subdivision 1. DUTY. An employee of the executive branch involved directly or indirectly in the acquisition process, at any level, is subject to the code of ethics in section 43A.38.

Subd. 2. CONFLICT OF INTEREST POLICY DEVELOPMENT. (a) The commissioner must develop policies regarding code of ethics and conflict of interest designed to prevent conflicts of interest for employees involved in the acquisition of goods, services, and utilities. The policies must apply to employees who are directly or indirectly involved in the acquisition of goods, services, and utilities, developing requests for proposals, evaluating bids or proposals, awarding the contract, selecting the final vendor, drafting and entering into contracts, evaluating performance under these contracts, and authorizing payments under the contract.

(b) The policies must contain a process for making employees aware of policy and laws relating to conflict of interest, and for training employees on how to avoid and deal with potential conflicts.

(c) The policies must contain a process under which an employee who has a conflict of interest or a potential conflict of interest must disclose the matter, and a process under which work on the contract may be assigned to another employee if possible.

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Sec. 6. [16C.05] CONTRACT MANAGEMENT; VALIDITY AND REVIEW.

Subdivision 1. AGENCY COOPERATION. Agencies shall fully cooperate with the commissioner in the management and review of state contracts.

Subd. 2. CREATION AND VALIDITY OF CONTRACTS. (a) A contract is not valid and the state is not bound by it unless:

(1) it has first been executed by the head of the agency or a delegate who is a party to the contract;

(2) it has been approved by the commissioner;

(3) it has been approved by the attorney general or a delegate as to form and execution;

(4) the accounting system shows an obligation in an expense budget or encumbrance for the amount of the contract liability; and

(5) the combined contract and amendments shall not exceed five years, unless otherwise provided for by law. The term of the original contract must not exceed two years unless the commissioner determines that a longer duration is in the best interest of the state.

(b) Grants, interagency agreements, purchase orders, and annual plans need not, in the discretion of the commissioner and attorney general, require the signature of the commissioner and/or the attorney general.

(c) A fully executed copy of every contract must be kept on file at the contracting agency.

Subd. 3. EXCEPTION. The requirements of subdivision 2 do not apply to contracts of the department of economic security distributing state and federal funds for the purpose of subcontracting the provision of program services to eligible recipients. For these contracts, the commissioner of economic security is authorized to directly enter into agency contracts and encumber available funds. For contracts distributing state or federal funds pursuant to the federal Economic Dislocation and Worker Adjustment Assistance Act, United States Code, title 29, section 1651 et seq., or sections 268.9771, 268.978, 268.9781, and 268.9782, the commissioner of economic security is authorized to directly enter into agency contracts with approval of the workforce development council and encumber available funds to ensure a rapid response to the needs of dislocated workers. The commissioner of economic security shall adopt internal procedures to administer and monitor funds distributed under these contracts. This exception also applies to any contracts entered into by the commissioner of children, families, and learning that were previously entered into by the commissioner of economic security.

Subd. 4. CONTRACT ADMINISTRATION. A contracting agency shall diligently administer and monitor any contract it has entered into, pursuant to a delegation of duties from the commissioner. The commissioner may require an agency to report to the commissioner at any time on the status of any contracts to which the agency is a party.

Subd. 5. SUBJECT TO AUDIT. A contract or any pass-through disbursement of public funds to a vendor of goods or services or a grantee made by or under the supervision of the commissioner or any county or unit of local government must include, ex-

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pressed or implied, an audit clause that provides that the books, records, documents, and accounting procedures and practices of the vendor or other party, that are relevant to the contract or transaction, are subject to examination by the contracting agency and either the legislative auditor or the state auditor, as appropriate, for a minimum of six years. If the contracting agency is a local unit of government, and the governing body of the local unit of government requests that the state auditor examine the books, records, documents, and accounting procedures and practices of the vendor or other party pursuant to this subdivision, the contracting agency shall be liable for the cost of the examination. If the contracting agency is a local unit of government, and the grantee, vendor, or other party requests that the state auditor examine all books, records, documents, and accounting procedures and practices related to the contract, the grantee, vendor, or other party that requested the examination shall be liable for the cost of the examination. An agency contract made for purchase, lease, or license of software and data from the state is not required to contain this audit clause.

Subd. 6. AUTHORITY OF ATTORNEY GENERAL. The attorney general may pursue remedies available by law to avoid the obligation of an agency to pay under a contract or to recover payments made if services performed or goods received under the contract are so unsatisfactory, incomplete, or inconsistent that payment would involve unjust enrichment. The contrary opinion of the contracting agency does not affect the power of the attorney general under this subdivision.

Subd. 7. CONTRACTS WITH INDIAN TRIBES AND BANDS. Notwithstanding any other law, an agency may not require an Indian tribe or band to deny its sovereignty as a requirement or condition of a contract with an agency.

Sec. 7. [16C.06] ACQUISITIONS.

Subdivision 1. PUBLICATION REQUIREMENTS. Notices of solicitations for acquisitions estimated to be more than \$25,000 must be publicized in a manner designated by the commissioner.

Subd. 2. SOLICITATION PROCESS. (a) A formal solicitation must be used to acquire all goods, service contracts, and utilities estimated at or more than \$25,000 unless otherwise provided for. All formal responses must be sealed when they are received and must be opened in public at the hour stated in the solicitation. Formal responses must be authenticated by the responder in a manner specified by the commissioner.

(b) An informal solicitation may be used to acquire all goods, service contracts, and utilities that are estimated at less than \$25,000. The number of vendors required to receive solicitations may be determined by the commissioner. Informal responses must be authenticated by the responder in a manner specified by the commissioner.

Subd. 3. INFORMATION IN BIDS AND PROPOSALS. (a) Only the name of the vendor and dollar amounts specified in a response to a request for bids shall be read at the time of opening. Only the name of the responding vendors to all requests for proposals shall be read at the time of opening. All other information contained in a vendor's response to a bid is classified as nonpublic data, as defined in section 13.02, and remains nonpublic data until completion of the selection process. All other information contained in a vendor's response to a request for proposal, other than the name of the vendor, is classified as nonpublic data, as defined in section 13.02, and remains nonpublic data until the completion of the evaluation process.

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(b) All responses are public information at the time of the award unless otherwise provided for. All responses and documents pertaining to the final award of an acquisition must be retained and made a part of a permanent file or record and remain open to public inspection, after award, unless otherwise provided for by law.

Subd. 4. **MULTIPLE AWARDS.** The commissioner may award a contract to more than one vendor if, in the opinion of the commissioner, it is in the best interest of the state.

Subd. 5. **STATE AS RESPONDER.** The head of an agency, in consultation with the requesting agency and the commissioner, may respond to a solicitation or request if the goods and services meet the needs of the requesting agency and provide the state with the best value. When an agency responds to a solicitation, all work product relating to the response is nonpublic data as defined in section 13.02, and shall become public information in accordance with subdivision 3.

Subd. 6. **AWARDS.** Awards must be based on best value, which includes an evaluation of price, and may include other considerations including, but not limited to, environmental considerations, quality, and vendor performance. If criteria other than price are used, the solicitation document must state the relative importance of price and other factors.

Subd. 7. **OTHER STATES WITH RESIDENT PREFERENCE.** Acquisition of goods and services must be awarded according to the provisions of this chapter except that a resident vendor shall be allowed a preference over a nonresident vendor from a state that gives or requires a preference to vendors from that state. The preference shall be equal to the preference given or required by the state of the nonresident vendor.

Subd. 8. **FEDERALLY FUNDED PROJECTS EXEMPT.** Subdivision 7 does not apply to a contract for any project in which federal funds are expended.

Subd. 9. **REJECTION.** At the discretion of the commissioner, any or all responses may be rejected if it is determined to be in the best interest of the state.

Subd. 10. **PREFERENCES NOT CUMULATIVE.** The preferences provided for under subdivision 7 and sections 16B.121 and 16C.16 are not cumulative. The total percentage of preference granted on a contract may not exceed the highest percentage of preference allowed for that contract under any one of these statutory sections.

Sec. 8. [16C.07] **EMPLOYEE SKILLS INVENTORY.**

The commissioner of employee relations shall develop a directory of services that state agencies commonly provide that are professional or technical in nature.

Before an agency may seek approval of a professional or technical services contract valued at a total cost in excess of \$25,000, it must certify to the commissioner that it has publicized the contract by posting notice at appropriate worksites within agencies and has made reasonable efforts to determine that no state employee or agency, including an employee or agency outside the contracting agency, is able and available to perform the required services. When possible, this posting should be done electronically.

Sec. 9. [16C.08] **PROFESSIONAL OR TECHNICAL SERVICES.**

Subdivision 1. **DEFINITION.** For the purposes of this section, "professional or technical services" means services that are intellectual in character, including consulta-

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tion, analysis, evaluation, prediction, planning, programming, or recommendation, and result in the production of a report or the completion of a task. Professional or technical contracts do not include the provision of supplies or materials except by the approval of the commissioner or except as incidental to the provision of professional or technical services.

Subd. 2. DUTIES OF CONTRACTING AGENCY. Before an agency may seek approval of a professional or technical services contract valued in excess of \$5,000, it must certify to the commissioner that:

(1) no current state employee is able and available to perform the services called for by the contract;

(2) the normal competitive bidding mechanisms will not provide for adequate performance of the services;

(3) the contractor has certified that the product of the services will be original in character;

(4) reasonable efforts were made to publicize the availability of the contract to the public;

(5) the agency has received, reviewed, and accepted a detailed work plan from the contractor for performance under the contract, if applicable;

(6) the agency has developed, and fully intends to implement, a written plan providing for the assignment of specific agency personnel to a monitoring and liaison function, the periodic review of interim reports or other indications of past performance, and the ultimate utilization of the final product of the services; and

(7) the agency will not allow the contractor to begin work before funds are fully encumbered.

Subd. 3. PROCEDURE FOR PROFESSIONAL OR TECHNICAL SERVICES CONTRACTS. Before approving a proposed contract for professional or technical services, the commissioner must determine, at least, that:

(1) all provisions of subdivision 2 and section 16C.16 have been verified or complied with;

(2) the work to be performed under the contract is necessary to the agency's achievement of its statutory responsibilities and there is statutory authority to enter into the contract;

(3) the contract will not establish an employment relationship between the state or the agency and any persons performing under the contract;

(4) the contractor and agents are not employees of the state;

(5) no agency has previously performed or contracted for the performance of tasks which would be substantially duplicated under the proposed contract;

(6) the contracting agency has specified a satisfactory method of evaluating and using the results of the work to be performed; and

(7) the combined contract and amendments will not exceed five years, unless otherwise provided for by law. The term of the original contract must not exceed two years

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unless the commissioner determines that a longer duration is in the best interest of the state.

Subd. 4. REPORTS. (a) The commissioner shall submit to the governor, the chairs of the house ways and means and senate finance committees, and the legislative reference library a yearly listing of all contracts for professional or technical services executed. The report must identify the contractor, contract amount, duration, and services to be provided. The commissioner shall also issue yearly reports summarizing the contract review activities of the department by fiscal year.

(b) The fiscal year report must be submitted by September 1 of each year and must:

(1) be sorted by agency and by contractor;

(2) show the aggregate value of contracts issued by each agency and issued to each contractor;

(3) distinguish between contracts that are being issued for the first time and contracts that are being extended;

(4) state the termination date of each contract; and

(5) identify services by commodity code, including topics such as contracts for training, contracts for research and opinions, and contracts for computer systems.

(c) Within 30 days of final completion of a contract over \$40,000 covered by this subdivision, the head of the agency entering into the contract must submit a one-page report to the commissioner who must submit a copy to the legislative reference library. The report must:

(1) summarize the purpose of the contract, including why it was necessary to enter into a contract;

(2) state the amount spent on the contract; and

(3) explain why this amount was a cost-effective way to enable the agency to provide its services or products better or more efficiently.

Subd. 5. CONTRACT TERMS. (a) A professional or technical services contract must by its terms permit the commissioner to unilaterally terminate the contract prior to completion, upon payment of just compensation, if the commissioner determines that further performance under the contract would not serve agency purposes.

(b) The terms of a contract must provide that no more than 90 percent of the amount due under the contract may be paid until the final product has been reviewed by the head of the agency entering into the contract and the head of the agency has certified that the contractor has satisfactorily fulfilled the terms of the contract, unless specifically excluded in writing by the commissioner.

Subd. 6. FILING COPY. If the final product of the contract is a written report, a copy must be filed with the legislative reference library.

Subd. 7. EXCLUSIONS. This section does not apply to contracts with individuals or organizations for administration of employee pension plans authorized under chapter 354B or 354C.

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Sec. 10. [16C.09] PROCEDURE FOR SERVICE CONTRACTS.

Before entering into or approving a service contract, the commissioner must determine, at least, that:

(1) no current state employee is able and available to perform the services called for by the contract;

(2) the work to be performed under the contract is necessary to the agency's achievement of its statutory responsibilities and there is statutory authority to enter into the contract;

(3) the contract will not establish an employment relationship between the state or the agency and any persons performing under the contract;

(4) the contractor and agents are not employees of the state;

(5) the contracting agency has specified a satisfactory method of evaluating and using the results of the work to be performed; and

(6) the combined contract and amendments will not exceed five years, unless otherwise provided for by law. The term of the original contract must not exceed two years, unless the commissioner determines that a longer duration is in the best interest of the state.

For purposes of clause (1), employees are available if qualified and:

(i) are already doing the work in question; or

(ii) are on layoff status in classes that can do the work in question.

An employee is not available if the employee is doing other work, is retired, or has decided not to do the work in question.

Sec. 11. [16C.10] EXCEPTIONS TO THE SOLICITATION PROCESS.

Subdivision 1. SINGLE SOURCE. The solicitation process described in this chapter is not required when there is clearly and legitimately only a single source for the goods and services and the commissioner determines that the price has been fairly and reasonably established.

Subd. 2. EMERGENCY ACQUISITION. (a) For the purpose of this subdivision, "emergency" means a threat to public health, welfare, or safety that threatens the functioning of government, the protection of property, or the health or safety of people.

(b) The solicitation process described in this chapter is not required in emergencies. In emergencies, the commissioner may make any purchases necessary for the repair, rehabilitation, and improvement of a state-owned structure or may authorize an agency to do so and may purchase, or may authorize an agency to purchase, goods, services, or utility services directly for immediate use.

Subd. 3. FEDERAL AGENCY PRICE SCHEDULES. Notwithstanding anything in this chapter to the contrary, the commissioner may, instead of soliciting bids, contract for purchases with suppliers who have published schedules of prices effective for

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sales to any federal agency of the United States. These contracts may be entered into, regardless of the amount of the purchase price, if the commissioner considers them advantageous and if the purchase price of all the commodities purchased under the contract do not exceed the price specified by the schedule.

Subd. 4. COOPERATIVE AGREEMENTS. The solicitation process described in this chapter is not required for cooperative agreements. The commissioner may enter into contracts or accept prices effective for sales to any governmental unit as defined in section 471.59, through a cooperative agreement as defined in section 471.59.

Subd. 5. SPECIFIC PURCHASES. The solicitation process described in this chapter is not required for acquisition of the following:

(1) merchandise for resale purchased under policies determined by the commissioner;

(2) farm and garden products which, as determined by the commissioner, may be purchased at the prevailing market price on the date of sale;

(3) goods and services from the Minnesota correctional facilities;

(4) goods and services from rehabilitation facilities and sheltered workshops that are certified by the commissioner of economic security;

(5) goods and services for use by a community-based residential facility operated by the commissioner of human services;

(6) goods purchased at auction or when submitting a sealed bid at auction provided that before authorizing such an action, the commissioner consult with the requesting agency to determine a fair and reasonable value for the goods considering factors including, but not limited to, costs associated with submitting a bid, travel, transportation, and storage. This fair and reasonable value must represent the limit of the state's bid; and

(7) utility services where no competition exists or where rates are fixed by law or ordinance.

Subd. 6. EXPENDITURES UNDER SPECIFIED AMOUNTS. The solicitation process described in this chapter is not required for:

(1) acquisition of goods or services, other than professional or technical services, in an amount of \$2,500 or less; or

(2) acquisition of professional or technical services in an amount of \$5,000 or less, provided the requirements of section 16C.08, subdivisions 3 to 6, are met.

Sec. 12. [16C.11] COOPERATIVE PURCHASING VENTURE; PURCHASING REVOLVING FUND.

The commissioner may enter into joint or cooperative purchasing agreements with any entity that is authorized under section 471.59 to do so. The cooperative purchasing venture revolving fund is a separate account in the state treasury. The commissioner may charge a fee to cover the commissioner's administrative expenses to governmental units that have joint or cooperative purchasing agreements with the state under section 471.59. The fees collected must be deposited in the revolving fund established by this section. Money in the fund is appropriated to the commissioner to administer the programs and services covered by this chapter.

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Sec. 13. [16C.12] AGRICULTURAL FOOD PRODUCTS GROWN IN STATE.

The commissioner shall encourage and make a reasonable attempt to identify and purchase food products that are grown in the state.

Sec. 14. [16C.13] CERTAIN VEHICLES.

Upon the written request of the commissioner of public safety, motor vehicles for use by investigative and undercover agents of the department of public safety must be purchased by the brand, make, and model specified by the agency.

Sec. 15. [16C.14] ENERGY EFFICIENCY INSTALLMENT PURCHASES.

Subdivision 1. CONTRACT CONDITIONS. The commissioner may contract to purchase by installment payments capital or other equipment or services intended to improve the energy efficiency of a state building or facility if:

(1) the term of the contract does not exceed ten years, with not more than a ten-year payback;

(2) the entire cost of the contract is a percentage of the resultant savings in energy costs only. "Savings in energy cost" means a comparison of energy cost and energy usage under the precontract conditions, including reasonable projections of energy cost and usage if no change is made to the precontract conditions, against energy cost and usage with the changes made under the contract. If it is impractical to directly measure energy cost and/or energy usage, reasonable engineering estimates may be substituted for measured results;

(3) the contract for purchase must be completed using a solicitation;

(4) the commissioner has determined that the contract vendor is a responsible vendor;

(5) the contract vendor can finance or obtain financing for the performance of the contract without state assistance or guarantee; and

(6) the state may unilaterally cancel the agreement if the legislature fails to appropriate funds to continue the contract or if the contractor at any time during the term of the contract fails to perform its contractual obligations, including failure to deliver or install equipment or materials, failure to replace faulty equipment or materials in a timely fashion, and failure to maintain the equipment as agreed in the contract.

Subd. 2. ENERGY APPROPRIATION. The commissioner may spend money appropriated for energy costs in payment of a contract under this section.

Subd. 3. ENERGY CONSERVATION INCENTIVES. Notwithstanding any other law to the contrary, fuel cost savings resulting from energy conservation actions shall be available at the managerial level at which the actions took place for expenditure for other purposes within the biennium in which the actions occur or in the case of a shared savings agreement for the contract period of the shared savings agreement. For purposes of this subdivision "shared savings agreement" means a contract meeting the terms and conditions of subdivision 1.

Subd. 4. ENERGY COSTS. The entire cost of an energy efficiency installment purchase contract must be a percentage of the resultant savings in energy costs. Neither

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the state nor any agency is liable to make payments on the contract except to the extent that there are savings in energy costs that must be shared with other parties to the contract.

Sec. 16. [16C.15] SHELTERED WORKSHOPS AND SERVICES WORK ACTIVITY PROGRAMS.

The commissioner, in consultation with the commissioner of economic security, shall prepare a list containing products and services of state-certified rehabilitation facilities, sheltered workshops, and work activity programs for acquisition by state agencies and institutions.

Sec. 17. [16C.16] DESIGNATION OF PROCUREMENTS FROM SMALL BUSINESSES.

Subdivision 1. SMALL BUSINESS PROCUREMENTS. The commissioner shall for each fiscal year ensure that small businesses receive at least 25 percent of the value of anticipated total state procurement of goods and services, including printing and construction. The commissioner shall divide the procurements so designated into contract award units of economically feasible production runs in order to facilitate offers or bids from small businesses. In making the annual designation of such procurements the commissioner shall attempt (1) to vary the included procurements so that a variety of goods and services produced by different small businesses are obtained each year, and (2) to designate small business procurements in a manner that will encourage proportional distribution of such awards among the geographical regions of the state. To promote the geographical distribution of awards, the commissioner may designate a portion of the small business procurement for award to bidders from a specified congressional district or other geographical region specified by the commissioner. The failure of the commissioner to designate particular procurements shall not be deemed to prohibit or discourage small businesses from seeking the procurement award through the normal process.

Subd. 2. SMALL BUSINESS. The commissioner shall adopt rules defining "small business" for purposes of sections 16C.16 to 16C.21, 137.31, 137.35, 161.321, and 473.142. The definition must include only businesses with their principal place of business in Minnesota. The definition must establish different size standards for various types of businesses. In establishing these standards, the commissioner must consider the differences among industries caused by the size of the market for goods or services and the relative size and market share of the competitors operating in those markets.

Subd. 3. PROFESSIONAL OR TECHNICAL PROCUREMENTS. Every state agency must for each fiscal year designate for awarding to small businesses at least 25 percent of the value of anticipated procurements of that agency for professional or technical services. The set-aside under this subdivision is in addition to that provided by subdivision 1, but must otherwise comply with section 16C.08.

Subd. 4. TARGETED GROUP PURCHASING. The commissioner shall establish a program for purchasing goods and services from targeted group businesses, as designated in subdivision 5. The purpose of the program is to remedy the effects of past discrimination against members of targeted groups. In furtherance of this purpose, the commissioner shall attempt to ensure that purchases from targeted group businesses reflect a fair and equitable representation of all the state's purchasing.

Subd. 5. DESIGNATION OF TARGETED GROUPS. (a) The commissioner of administration shall periodically designate businesses that are majority owned and oper-

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ated by women, persons with a substantial physical disability, or specific minorities as targeted group businesses within purchasing categories as determined by the commissioner. A group may be targeted within a purchasing category if the commissioner determines there is a statistical disparity between the percentage of purchasing from businesses owned by group members and the representation of businesses owned by group members among all businesses in the state in the purchasing category.

(b) In addition to designations under paragraph (a), an individual business may be included as a targeted group business if the commissioner determines that inclusion is necessary to remedy discrimination against the owner based on race, gender, or disability in attempting to operate a business that would provide goods or services to public agencies.

(c) The designations of purchasing categories and businesses under paragraphs (a) and (b) are not rules for purposes of chapter 14, and are not subject to rulemaking procedures of that chapter.

Subd. 6. PURCHASING METHODS. (a) The commissioner may award up to a six percent preference in the amount bid for specified goods or services to small targeted group businesses.

(b) The commissioner may designate a purchase of goods or services for award only to small businesses or small targeted group businesses if the commissioner determines that at least three small businesses or small targeted group businesses are likely to bid.

(c) The commissioner, as a condition of awarding a construction contract or approving a contract for professional or technical services, may set goals that require the prime contractor to subcontract a portion of the contract to small businesses or small targeted group businesses. The commissioner must establish a procedure for granting waivers from the subcontracting requirement when qualified small businesses or small targeted group businesses are not reasonably available. The commissioner may establish financial incentives for prime contractors who exceed the goals for use of small business or small targeted group business subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph. The subcontracting requirements of this paragraph do not apply to prime contractors who are small businesses or small targeted group businesses.

Subd. 7. ECONOMICALLY DISADVANTAGED AREAS. The commissioner may award up to a four percent preference in the amount bid on state procurement to small businesses located in an economically disadvantaged area. A business is located in an economically disadvantaged area if:

(1) the owner resides in or the business is located in a county in which the median income for married couples is less than 70 percent of the state median income for married couples;

(2) the owner resides in or the business is located in an area designated a labor surplus area by the United States Department of Labor; or

(3) the business is a rehabilitation facility or work activity program.

The commissioner may designate one or more areas designated as targeted neighborhoods under section 469.202 or as enterprise zones under section 469.167 as econom-

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ically disadvantaged areas for purposes of this subdivision if the commissioner determines that this designation would further the purposes of this section. If the owner of a small business resides or is employed in a designated area, the small business is eligible for any preference provided under this subdivision.

The department of revenue shall gather data necessary to make the determinations required by clause (1), and shall annually certify counties that qualify under clause (1). An area designated a labor surplus area retains that status for 120 days after certified small businesses in the area are notified of the termination of the designation by the United States Department of Labor.

Subd. 8. SURETY BONDS. Surety bonds guaranteed by the federal Small Business Administration and second party bonds are acceptable security for a construction award under this section. "Second party bond" means a bond that designates as principal, guarantor, or both, a person or persons in addition to the person to whom the contract is proposed for award.

Subd. 9. DETERMINATION OF ABILITY TO PERFORM. Before making an award under the preference programs established in subdivisions 4 to 7, the commissioner shall evaluate whether the small business or small targeted group business scheduled to receive the award is able to perform the contract. This determination shall include consideration of production and financial capacity and technical competence.

Subd. 10. LIMITS. At least 75 percent of the value of the subcontracts awarded to small businesses or small targeted group businesses under subdivision 6, paragraph (c), must be performed by the business to which the subcontract is awarded or by another small business or small targeted group business.

Subd. 11. PROCUREMENT PROCEDURES. All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply equally to procurements designated for small businesses or small targeted group businesses. In the event of conflict with other rules, section 16C.15 and rules adopted under it govern, if section 16C.15 applies. If it does not apply, sections 16C.16 to 16C.21 and rules adopted under those sections govern.

Subd. 12. APPLICABILITY. This section does not apply to construction contracts or contracts for professional or technical services under section 16C.08 that are financed in whole or in part with federal funds and that are subject to federal disadvantaged business enterprise regulations.

Sec. 18. [16C.17] ENCOURAGEMENT OF PARTICIPATION; ADVISORY COUNCIL.

Subdivision 1. COMMISSIONER OF ADMINISTRATION. The commissioner of administration and trade and economic development shall publicize the provisions of the purchasing programs in sections 16C.16 to 16C.21, attempt to locate small businesses or small targeted group businesses able to perform under the programs, and encourage participation through education, technical assistance, mentoring, and other means. When the commissioner of administration determines that a small business or small targeted group business is unable to perform under a program established in sections 16C.16 to 16C.21, the commissioner shall inform the commissioner of trade and economic development who shall assist the small business or small targeted group busi-

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ness in attempting to remedy the causes of the inability to perform the award. In assisting the small business or small targeted group business, the commissioner of trade and economic development in cooperation with the commissioner of administration shall use management or financial assistance programs made available by or through the department of trade and economic development, other state or governmental agencies, or private sources.

Subd. 2. **ADVISORY COUNCIL.** The small business procurement advisory council consists of 13 members appointed by the commissioner of administration. A chair of the advisory council shall be elected from among the members. The appointments are subject to the appointments program provided by section 15.0597. The terms, compensation, and removal of members are as provided in section 15.059.

Subd. 3. **DUTIES.** The small business procurement advisory council shall:

(1) advise the commissioner of administration on matters relating to the small business and small targeted group business procurement program;

(2) review complaints or grievances from small businesses and small targeted group businesses who are doing or attempting to do business under the program; and

(3) review the reports of the commissioners of administration and trade and economic development provided by section 16C.18 to ensure compliance with the goals of the program.

Sec. 19. [16C.18] REPORTS.

Subdivision 1. **COMMISSIONER OF ADMINISTRATION.** The commissioner shall submit an annual report pursuant to section 3.195 to the governor and the legislature with a copy to the commissioner of trade and economic development indicating the progress being made toward the objectives and goals of sections 16C.16 to 16C.21, 161.321, and 473.142 during the preceding fiscal year.

Subd. 2. **COMMISSIONER OF TRADE AND ECONOMIC DEVELOPMENT.** The commissioner of trade and economic development shall submit an annual report to the governor and the legislature pursuant to section 3.195 with a copy to the commissioner of administration. This report shall include the following information:

(1) the efforts undertaken to publicize the provisions of the small business and small targeted group business procurement program during the preceding fiscal year;

(2) the efforts undertaken to identify small businesses and small targeted group businesses and the efforts undertaken to encourage participation in the targeted group purchasing program;

(3) the efforts undertaken by the commissioner to remedy the inability of small businesses and small targeted group businesses to perform on potential awards; and

(4) the commissioner's recommendations for strengthening the small business and small targeted group business procurement program and delivery of services to small businesses.

Subd. 3. **REPORTS FROM OTHER AGENCIES.** The commissioner of transportation, and each metropolitan agency listed in section 473.143, subdivision 1, shall

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report to the commissioner of administration all information that the commissioner requests to make reports required under this section. The information must be reported at the time and in the manner requested by the commissioner of administration.

Sec. 20. [16C.19] ELIGIBILITY; RULES.

(a) A small business wishing to participate in the programs under section 16C.16, subdivisions 4 to 7, must be certified by the commissioner. The commissioner shall adopt by rule standards and procedures for certifying that small businesses, small targeted group businesses, and small businesses located in economically disadvantaged areas are eligible to participate under the requirements of sections 16C.16 to 16C.21. The commissioner shall adopt by rule standards and procedures for hearing appeals and grievances and other rules necessary to carry out the duties set forth in sections 16C.16 to 16C.21.

(b) The commissioner may make rules which exclude or limit the participation of nonmanufacturing business, including third-party lessors, brokers, franchises, jobbers, manufacturers' representatives, and others from eligibility under sections 16C.16 to 16C.21.

(c) The commissioner may make rules that set time limits and other eligibility limits on business participation in programs under sections 16C.16 to 16C.21.

Sec. 21. [16C.20] CERTIFICATION.

A business that is certified by the commissioner of administration as a small business, small targeted group business or a small business located in an economically disadvantaged area is eligible to participate under the requirements of sections 137.31 and 161.321 and, if certified as a small business or small targeted group business, under section 473.142 without further certification by the contracting agency.

Sec. 22. [16C.21] CRIMINAL PENALTY.

A person who knowingly provides false information to a public official or employee for the purpose of obtaining or retaining certification as a small targeted group business or a small business located in an economically disadvantaged area under sections 16C.16 to 16C.20, 137.31, 137.35, 161.321, or 473.142 is guilty of a misdemeanor.

Sec. 23. [16C.22] DISTRICT HEATING.

Notwithstanding any other law, general or special, the commissioner is authorized to enter into or approve a written agreement not to exceed 31 years with a district heating utility that will specify, but not be limited to, the appropriate terms and conditions for the interchange of district heating services.

Sec. 24. [16C.23] SURPLUS PROPERTY ACQUISITION, DISTRIBUTION, AND DISPOSAL.

Subdivision 1. DEFINITIONS. "Governmental unit or nonprofit organization" means a governmental unit as defined in section 471.59, subdivision 1, an Indian tribal government, and any nonprofit and tax-exempt medical institution, hospital, clinic, health center, school, school system, college, university, or other institution organized and existing for any purpose authorized by federal law to accept surplus federal property.

Subd. 2. SURPLUS PROPERTY. "Surplus property" means state or federal commodities, equipment, materials, supplies, books, printed matter, buildings, and other per-

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sonal or real property that is obsolete, unused, not needed for a public purpose, or ineffective for current use.

Subd. 3. AUTHORIZATION. (a) The commissioner is the state agency designated to transfer, purchase, accept, sell, or dispose of surplus property for the state and for the benefit of any other governmental unit or nonprofit organization for any purpose authorized by state and federal law and in accordance with state and federal rules and regulations. Any governmental unit or nonprofit organization may designate the commissioner to purchase or accept surplus property for it upon mutually agreeable terms and conditions. The commissioner may acquire, accept, warehouse, and distribute surplus property and charge a fee to cover any expenses incurred in connection with any of these acts.

(b) Federal surplus property that has been transferred to the state for donation to public agencies and nonprofit organizations must be transferred or sold in accordance with the plan developed under paragraph (c). Expenses incurred in connection with the acquisition, warehousing, distribution, and disposal of federal surplus property must be paid from the surplus services revolving fund. Proceeds of sales, minus any expenses, must be deposited in the surplus services revolving fund.

(c) The commissioner shall develop a detailed plan for disposal of donated federal property in conformance with state law and federal regulations. The plan must be submitted to the governor for certification and submission to the federal administrator of general services.

(d) The commissioner, after consultation with one or more nonprofit organizations with an interest in providing housing for homeless veterans and their families, may acquire property from the United States government that is designated by the General Services Administration as surplus property. The commissioner may lease the property to a qualified nonprofit organization that agrees to develop or rehabilitate the property for the purpose of providing suitable housing for veterans and their families. The lease agreement with the nonprofit organization may require that the property be developed for use as housing for homeless and displaced veterans and their families and for veterans and their families who lose their housing.

Subd. 4. DEPOSIT OF RECEIPTS. The surplus services revolving fund is a separate fund in the state treasury. All money resulting from the acquisition, acceptance, warehousing, distribution, and public sale of surplus property, must be deposited in the fund. Money paid into the surplus services revolving fund is appropriated to the commissioner for the purposes of the programs and services referred to in this section.

Subd. 5. TRANSFER OR SALE. (a) When the state or an agency operating under a legislative appropriation obtains surplus property from the commissioner, the commissioner of finance must, at the commissioner's request, transfer the cost of the surplus property, including any expenses of acquiring, accepting, warehousing, and distributing the surplus property, from the appropriation of the agency receiving the surplus property to the surplus services revolving fund. The determination of the commissioner is final as to the cost of the surplus property to the agency receiving the property.

(b) When any governmental unit or nonprofit organization other than an agency receives surplus property from the commissioner, the governmental unit or nonprofit organization must reimburse the surplus services revolving fund for the cost of the property, including the expenses of acquiring, accepting, warehousing, and distributing it, in an

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amount the commissioner sets. The commissioner may, however, require the governmental unit or nonprofit organization to deposit in advance in the surplus services revolving fund the cost of the surplus property upon mutually agreeable terms and conditions.

(c) The commissioner may transfer or sell state surplus property to any person at public auction, at prepriced sale, or by sealed bid process in accordance with applicable state laws.

Subd. 6. STATE SURPLUS PROPERTY. The commissioner may do any of the following to dispose of state surplus property:

(1) transfer it to or between state agencies;

(2) transfer it to a governmental unit or nonprofit organization in Minnesota; or

(3) sell it and charge a fee to cover expenses incurred by the commissioner in the disposal of the surplus property.

The proceeds of the sale less the fee are appropriated to the agency for whose account the sale was made, to be used and expended by that agency to purchase similar state property.

Subd. 7. GIFTS. The commissioner is authorized to solicit and accept donated money and fixed and consumable property for the benefit of the state and any other governmental unit or nonprofit organization for any purpose authorized by state and federal law and in accordance with federal regulations and rules. The gift acceptance procedures of sections 7.09 to 7.12 do not apply to this subdivision.

Sec. 25. [16C.24] RULES.

Minnesota Rules, parts 1230.0100 to 1230.4300, adopted under chapter 16B, govern under this chapter until amended, repealed, or superseded by rules adopted under chapter 16B or this chapter. In the event rules adopted under chapter 16B conflict with provisions of this chapter, this chapter governs.

Sec. 26. [16C.25] BUILDING AND CONSTRUCTION CONTRACTS.

Notwithstanding any contrary law, the provisions of Minnesota Statutes 1996, section 16B.07, 16B.08, 16B.09, and all other laws applicable to competitive bidding for building and construction contracts on the day before the effective date of this section apply to building and construction contracts entered into on or after the effective date of this section.

Sec. 27. Minnesota Statutes 1996, section 161.32, is amended by adding a subdivision to read:

Subd. 1a. STANDARD SPECIFICATIONS, SECURITY. Contracts under this section must be based on specifications prescribed by the commissioner. Each bidder for a contract must furnish security approved by the commissioner to ensure completion of the contract.

Sec. 28. Minnesota Statutes 1996, section 161.32, is amended by adding a subdivision to read:

Subd. 1b. LOWEST RESPONSIBLE BIDDER. Trunk highway construction contracts, including design-build contracts, must be awarded to the lowest responsible

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bidder, taking into consideration conformity with the specifications, the purpose for which the contract or purchase is intended, the status and capability of the vendor, and other considerations imposed in the call for bids. The commissioner may decide which is the lowest responsible bidder for all contracts and may use the principles of life cycle costing, where appropriate, in determining the lowest overall bid. Any or all bids may be rejected. In a case where competitive bids are required and where all bids are rejected, new bids, if solicited, must be called for as in the first instance, unless otherwise provided by law.

Sec. 29. Minnesota Statutes 1996, section 161.32, is amended by adding a subdivision to read:

Subd. 1c. ALTERATIONS AND ERASURES. A bid containing an alteration or erasure of any price contained in the bid which is used in determining the lowest responsible bid must be rejected unless the alteration or erasure is corrected pursuant to this subdivision. An alteration or erasure may be crossed out and the correction printed in ink or typewritten adjacent to it and initialed in ink by the person signing the bid.

Sec. 30. Minnesota Statutes 1996, section 161.32, is amended by adding a subdivision to read:

Subd. 1d. SPECIAL CIRCUMSTANCES. The commissioner may reject the bid of any bidder who has failed to perform a previous contract with the state. In the case of identical low bids from two or more bidders, the commissioner may use negotiated procurement methods with the tied low bidders for that particular transaction, so long as the price paid does not exceed the low tied bid price. The commissioner may award contracts to more than one bidder in accordance with subdivision 1b, if doing so does not decrease the service level or diminish the effect of competition.

Sec. 31. Minnesota Statutes 1996, section 161.32, is amended by adding a subdivision to read:

Subd. 1e. RECORD. A record must be kept of all bids, including names of bidders, amounts of bids, and each successful bid. This record is open to public inspection.

Sec. 32. [174.18] ADVERTISEMENT OF HIGHWAY CONTRACTS.

Notwithstanding anything in chapter 16C to the contrary, all contracts for the repair, improvement, maintenance, or construction of highways or highway bridges must be advertised and let as provided by law for highway construction contracts.

Sec. 33. Minnesota Statutes 1997 Supplement, section 363.073, subdivision 1, is amended to read:

Subdivision 1. SCOPE OF APPLICATION. No department or agency of the state shall accept any bid or proposal for a contract or agreement (a) For all contracts for goods and services in excess of \$100,000, no department or agency of the state shall accept any bid or proposal for a contract or agreement from any business having more than 40 full-time employees within this state on a single working day during the previous 12 months, unless the firm or business has an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals, submitted to the commissioner of human rights for approval. No department or agency of the state shall execute any such contract or agreement for goods or services in excess of \$100,000 with any business hav-

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ing more than 40 full-time employees, either within or outside this state, on a single working day during the previous 12 months, unless the firm or business has an until the affirmative action plan for the employment of minority persons, women, and the disabled that has been approved by the commissioner of human rights. Receipt of a certificate of compliance issued by the commissioner shall signify that a firm or business has an affirmative action plan that has been approved by the commissioner. A certificate shall be valid for a period of two years. A municipality as defined in section 466.01, subdivision 1, that receives state money for any reason is encouraged to prepare and implement an affirmative action plan for the employment of minority persons, women, and the qualified disabled and submit the plan to the commissioner of human rights.

(b) This paragraph applies to a contract for goods or services in excess of \$100,000 to be entered into between a department or agency of the state and a business that is not subject to paragraph (a), but that has more than 40 full-time employees on a single working day during the previous 12 months in the state where the business has its primary place of business. A department or agency of the state may not execute a contract or agreement with a business covered by this paragraph unless the business has a certificate of compliance issued by the commissioner under paragraph (a) or the business certifies that it is in compliance with federal affirmative action requirements.

(c) This section does not apply to contracts entered into by the state board of investment for investment options under section 352.96.

Sec. 34. **REPORT.**

The commissioner of administration shall report to the legislature by January 15, 1999, in the biennial report required under Minnesota Statutes, section 115A.15, subdivision 5, on the potential use of measurable objectives as a means of tracking progress toward the purchase of recycled content goods.

Sec. 35. **REPEALER.**

Minnesota Statutes 1996, sections 16B.06; 16B.07; 16B.08; 16B.09; 16B.101; 16B.102; 16B.103; 16B.123; 16B.13; 16B.14; 16B.15; 16B.16; 16B.167; 16B.17; 16B.175; 16B.18, subdivisions 1, 2, and 4; 16B.185; 16B.19; 16B.20, subdivisions 1 and 3; 16B.21; 16B.22; 16B.226; 16B.227; 16B.23; 16B.28; 16B.29; and 16B.89; and Minnesota Statutes 1997 Supplement, sections 16B.18, subdivision 3; 16B.20, subdivision 2; and 16B.482, are repealed.

Sec. 36. **EFFECTIVE DATE.**

Section 33 is effective May 1, 1998, except that it does not apply to any part of the procurement process that results from a solicitation dated before May 1, 1998. The remainder of this article is effective July 1, 1998, except that it does not apply to any part of the procurement process that results from a solicitation dated before July 1, 1998.

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ARTICLE 2

CONFORMING AMENDMENTS

Section 1. Minnesota Statutes 1997 Supplement, section 3.225, subdivision 1, is amended to read:

Subdivision 1. **APPLICATION.** This section applies to a contract for professional or technical services entered into by the house of representatives, the senate, the legislative coordinating commission, or any group under the jurisdiction of the legislative coordinating commission. For purposes of this section, "professional or technical services" has the meaning defined in section ~~16B.17~~ 16C.08, subdivision 1, but does not include legal services for official legislative business.

Sec. 2. Minnesota Statutes 1996, section 3.225, subdivision 2, is amended to read:

Subd. 2. **REQUIREMENTS FOR ALL CONTRACTS.** Before entering into a contract for professional or technical services, the contracting entity must determine that:

(1) all provisions of section ~~16B.19~~ 16C.16, subdivision 2 3, relating to purchases from small businesses, have been verified or complied with;

(2) the work to be performed under the contract is necessary to the entity's achievement of its responsibilities;

(3) the contract will not establish an employment relationship between the state or the entity and any persons performing under the contract;

(4) no current legislative employees will engage in the performance of the contract;

(5) no state agency has previously performed or contracted for the performance of tasks which would be substantially duplicated under the proposed contract;

(6) the contracting entity has specified a satisfactory method of evaluating and using the results of the work to be performed; and

(7) the combined contract and amendments will not extend for more than five years.

Sec. 3. Minnesota Statutes 1996, section 3.732, subdivision 6, is amended to read:

Subd. 6. **SETTLEMENT.** The head of each department or agency, or a designee, acting on behalf of the state, may enter into structured settlements, through the negotiation, creation, and use of annuities or similar financial plans for claimants, to resolve claims arising from the alleged negligence of the state, its agencies, or employees. Sections ~~16B.06, 16B.07, 16B.08, and 16B.09~~ 16C.03, subdivision 4, 16C.05, and 16C.06 do not apply to the state's selection of and contracts with structured settlement consultants or purveyors of structured settlement plans.

Sec. 4. Minnesota Statutes 1996, section 3.922, subdivision 5, is amended to read:

Subd. 5. **OFFICERS; PERSONNEL; AUTHORITY.** The council shall annually elect a chair and other officers as it may deem necessary. The chair may appoint subcommittees necessary to fulfill the duties of the council. It shall also employ and prescribe the duties of employees and agents as it deems necessary. The compensation of the executive director of the board is as provided by section 43A.18. All employees are in the unclassi-

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fied service. The chair is an ex officio member of the state board of human rights. Appropriations and other funds of the council are subject to chapter ~~16B~~ 16C. The council may contract in its own name. Contracts must be approved by a majority of the members of the council and executed by the chair and the executive director. The council may apply for, receive, and spend in its own name, grants and gifts of money consistent with the powers and duties specified in this section. The council shall maintain its primary office in Bemidji. It shall also maintain personnel and office space in St. Paul.

Sec. 5. Minnesota Statutes 1996, section 3C.10, subdivision 3, is amended to read:

Subd. 3. **NEGOTIATED CONTRACTS.** The revisor's office may negotiate for all or part of the editing, indexing, compiling, and printing of Minnesota Statutes, supplements to Minnesota Statutes, and Laws of Minnesota and contract with a law book publisher for these services. The provisions of chapter ~~16B~~ 16C as they relate to competitive bidding do not apply to these contracts. No contract may be made until the revisor of statutes has consulted with the legislative coordinating commission. Failure or refusal of the commission to make a recommendation promptly shall be deemed an affirmative recommendation.

Sec. 6. Minnesota Statutes 1996, section 4A.04, is amended to read:

4A.04 COOPERATIVE CONTRACTS.

(a) The director may apply for, receive, and expend money from municipal, county, regional, and other planning agencies; apply for, accept, and disburse grants and other aids for planning purposes from the federal government and from other public or private sources; and may enter into contracts with agencies of the federal government, local governmental units, the University of Minnesota, and other educational institutions, and private persons as necessary to perform the director's duties. Contracts made pursuant to this section are not subject to the provisions of chapter ~~16B~~ 16C, as they relate to competitive bidding.

(b) The director may apply for, receive, and expend money made available from federal sources or other sources for the purposes of carrying out the duties and responsibilities of the director relating to local and urban affairs.

(c) All money received by the director pursuant to this section shall be deposited in the state treasury and is appropriated to the director for the purposes for which the money has been received. The money shall not cancel and is available until expended.

Sec. 7. Minnesota Statutes 1996, section 6.551, is amended to read:

6.551 EXAMINATION OF GRANTEEES AND CONTRACTORS OF LOCAL GOVERNMENTS.

The state auditor may examine the books, records, documents, and accounting procedures and practices of a contractor or grantee of a local government pursuant to section ~~16B.06~~ 16C.05, subdivision 4 5. The examination shall be limited to the books, records, documents, and accounting procedures and practices that are relevant to the contract or transaction with the local government.

Sec. 8. Minnesota Statutes 1996, section 11A.24, subdivision 4, is amended to read:

Subd. 4. **OTHER OBLIGATIONS.** (a) The state board may invest funds in bankers acceptances, certificates of deposit, deposit notes, commercial paper, mortgage secu-

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rities and asset backed securities, repurchase agreements and reverse repurchase agreements, guaranteed investment contracts, savings accounts, and guaranty fund certificates, surplus notes, or debentures of domestic mutual insurance companies if they conform to the following provisions:

(1) bankers acceptances and deposit notes of United States banks are limited to those issued by banks rated in the highest four quality categories by a nationally recognized rating agency;

(2) certificates of deposit are limited to those issued by (i) United States banks and savings institutions that are rated in the top four quality categories by a nationally recognized rating agency or whose certificates of deposit are fully insured by federal agencies; or (ii) credit unions in amounts up to the limit of insurance coverage provided by the National Credit Union Administration;

(3) commercial paper is limited to those issued by United States corporations or their Canadian subsidiaries and rated in the highest two quality categories by a nationally recognized rating agency;

(4) mortgage securities shall be rated in the top four quality categories by a nationally recognized rating agency;

(5) collateral for repurchase agreements and reverse repurchase agreements is limited to letters of credit and securities authorized in this section;

(6) guaranteed investment contracts are limited to those issued by insurance companies or banks rated in the top four quality categories by a nationally recognized rating agency or to alternative guaranteed investment contracts where the underlying assets comply with the requirements of this section;

(7) savings accounts are limited to those fully insured by federal agencies; and

(8) asset backed securities shall be rated in the top four quality categories by a nationally recognized rating agency.

(b) Sections 16A.58 and 16B.06, 16C.03, subdivision 4, and 16C.05 do not apply to certificates of deposit and collateralization agreements executed by the state board under paragraph (a), clause (2).

(c) In addition to investments authorized by paragraph (a), clause (4), the state board may purchase from the Minnesota housing finance agency all or any part of a pool of residential mortgages, not in default, that has previously been financed by the issuance of bonds or notes of the agency. The state board may also enter into a commitment with the agency, at the time of any issue of bonds or notes, to purchase at a specified future date, not exceeding 12 years from the date of the issue, the amount of mortgage loans then outstanding and not in default that have been made or purchased from the proceeds of the bonds or notes. The state board may charge reasonable fees for any such commitment and may agree to purchase the mortgage loans at a price sufficient to produce a yield to the state board comparable, in its judgment, to the yield available on similar mortgage loans at the date of the bonds or notes. The state board may also enter into agreements with the agency for the investment of any portion of the funds of the agency. The agreement must cover the period of the investment, withdrawal privileges, and any guaranteed rate of return.

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Sec. 9. Minnesota Statutes 1996, section 12.221, subdivision 5, is amended to read:

Subd. 5. **REQUIREMENTS WAIVED.** Pursuant to any federal-state agreement entered into by the state director, serving as the governor's authorized representative, in the acceptance of federal money made available as a result of a disaster declaration, and upon the review and acceptance by the attorney general's office of the language contained in the subgrant agreement and any amendments to the agreement, the requirements of section ~~16B.06~~ 16C.05, subdivision 2, paragraph (a), clause (3), must be waived.

Sec. 10. Minnesota Statutes 1996, section 15.061, is amended to read:

15.061 PROFESSIONAL OR TECHNICAL SERVICES.

In accordance with section ~~16B.17~~ sections 16C.03 and 16C.08, the head of a state department or agency may, with the approval of the commissioner of administration, contract for professional or technical services in connection with the operation of the department or agency. A contract negotiated under this section is not subject to the competitive bidding requirements of chapter ~~16B~~ 16C.

Sec. 11. Minnesota Statutes 1996, section 16A.101, is amended to read:

16A.101 SERVICE CONTRACTS.

The state accounting system must list expenditures for professional and technical service contracts, as defined in section ~~16B.17~~ 16C.08, subdivision 1, as a separate category. No other expenditures may be included in this category.

Sec. 12. Minnesota Statutes 1997 Supplement, section 16A.15, subdivision 3, is amended to read:

Subd. 3. **ALLOTMENT AND ENCUMBRANCE.** (a) A payment may not be made without prior obligation. An obligation may not be incurred against any fund, allotment, or appropriation unless the commissioner has certified a sufficient unencumbered balance or the accounting system shows sufficient allotment or encumbrance balance in the fund, allotment, or appropriation to meet it. The commissioner shall determine when the accounting system may be used to incur obligations without the commissioner's certification of a sufficient unencumbered balance. An expenditure or obligation authorized or incurred in violation of this chapter is invalid and ineligible for payment until made valid. A payment made in violation of this chapter is illegal. An employee authorizing or making the payment, or taking part in it, and a person receiving any part of the payment, are jointly and severally liable to the state for the amount paid or received. If an employee knowingly incurs an obligation or authorizes or makes an expenditure in violation of this chapter or takes part in the violation, the violation is just cause for the employee's removal by the appointing authority or by the governor if an appointing authority other than the governor fails to do so. In the latter case, the governor shall give notice of the violation and an opportunity to be heard on it to the employee and to the appointing authority. A claim presented against an appropriation without prior allotment or encumbrance may be made valid on investigation, review, and approval by the agency head in accordance with the commissioner's policy, if the services, materials, or supplies to be paid for were actually furnished in good faith without collusion and without intent to defraud. The commissioner may then draw a warrant to pay the claim just as properly allotted and encumbered claims are paid.

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(b) The commissioner may approve payment for materials and supplies in excess of the obligation amount when increases are authorized by section ~~16B.07~~ 16C.03, subdivision 2 3.

(c) To minimize potential construction delay claims, an agency with a project funded by a building appropriation may allow a contractor to proceed with supplemental work within the limits of the appropriation before money is encumbered. Under this circumstance, the agency may requisition funds and allow contractors to expeditiously proceed with a construction sequence. While the contractor is proceeding, the agency shall immediately act to encumber the required funds.

Sec. 13. Minnesota Statutes 1996, section 16A.85, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZATION.** The commissioner of administration may determine, in conjunction with the commissioner of finance, the personal property needs of the various state departments, agencies, boards, commissions and the legislature of the kinds of property identified in this subdivision that may be economically funded through a master lease program and request the commissioner of finance to execute a master lease. The master lease may be used only to finance the following kinds of purchases:

(a) The master lease may be used to finance purchases by the commissioner of administration with money from an internal services fund.

(b) The master lease may be used to refinance a purchase of equipment already purchased under a lease-purchase agreement.

(c) The master lease may be used to finance purchases of large equipment with a capital value of more than \$100,000 and a useful life of more than ten years.

(d) The legislature may specifically authorize a particular purchase to be financed using the master lease. The legislature anticipates that this authorization will be given only to finance the purchase of major pieces of equipment with a capital value of more than \$10,000.

The commissioner of finance may authorize the sale and issuance of certificates of participation relative to a master lease in an amount sufficient to fund these personal property needs. The term of the certificates must be less than the expected useful life of the equipment whose purchase is financed by the certificates. The commissioner of administration may use the proceeds from the master lease or the sale of the certificates of participation to acquire the personal property through the appropriate procurement procedure in chapter ~~16B~~ 16C. Money appropriated for the lease or acquisition of this personal property is appropriated to the commissioner of finance to make master lease payments.

Sec. 14. Minnesota Statutes 1997 Supplement, section 16B.465, subdivision 7, is amended to read:

Subd. 7. **EXEMPTION.** The system is exempt from the five-year limitation on contracts set by section ~~16B.07~~, ~~subdivision 2~~ sections 16C.05, ~~subdivision 2~~, paragraph (a), clause (5), 16C.08, ~~subdivision 3~~, clause (7), and 16C.09, clause (6).

Sec. 15. Minnesota Statutes 1997 Supplement, section 16E.07, subdivision 9, is amended to read:

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Subd. 9. **AGGREGATION OF SERVICE DEMAND.** The office shall identify opportunities to aggregate demand for technical services required by government units for online activities and may contract with governmental or nongovernmental entities to provide services. These contracts are not subject to the requirements of ~~chapter~~ chapters 16B and 16C, except sections ~~16B.167, 16B.17, and 16B.175~~ 16C.04, 16C.07, 16C.08, and 16C.09.

Sec. 16. Minnesota Statutes 1997 Supplement, section 17.03, subdivision 12, is amended to read:

Subd. 12. **CONTRACTS; APPROPRIATION.** The commissioner may accept money as part of a contract with any public or private entity to provide statutorily prescribed services by the department. A contract must specify the services to be provided by the department and the amount and method of reimbursement. Money generated in a contractual agreement under this section must be deposited in a special revenue fund and is appropriated to the department for purposes of providing services specified in the contracts. Contracts under this section must be processed in accordance with section ~~16B.06~~ 16C.05. The commissioner must report revenues collected and expenditures made under this section to the chairs of the environment and natural resources finance committee in the house of representatives and the environment and agriculture budget division in the senate by January 15 of each odd-numbered year.

Sec. 17. Minnesota Statutes 1996, section 17.1015, is amended to read:

17.1015 PROMOTIONAL EXPENDITURES.

In order to accomplish the purposes of section 17.101, the commissioner may participate jointly with private persons in appropriate programs and projects and may enter into contracts to carry out those programs and projects. The contracts may not include the acquisition of land or buildings and are not subject to the provisions of chapter ~~16B~~ 16C relating to competitive bidding.

The commissioner may spend money appropriated for the purposes of section 17.101, and expenditures made pursuant to section 17.101 for food, lodging, or travel are not governed by the travel rules of the commissioner of employee relations.

Sec. 18. Minnesota Statutes 1996, section 41A.023, is amended to read:

41A.023 POWERS.

In addition to other powers granted by this chapter, the board may:

- (1) sue and be sued;
- (2) acquire, hold, lease, and transfer any interest in real and personal property for its corporate purposes;
- (3) sell at public or private sale, at the price or prices determined by the board, any note, mortgage, lease, sublease, lease purchase, or other instrument or obligation evidencing or securing a loan made for the purpose of economic development, job creation, redevelopment, or community revitalization by a public agency to a business, for-profit or nonprofit organization, or an individual;
- (4) obtain insurance on its property;

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(5) obtain municipal bond insurance, letters of credit, surety obligations, or similar agreements from financial institutions;

(6) enter into other agreements or transactions, without regard to chapter 16B or 16C, that the board considers necessary or appropriate to carry out the purposes of this chapter with federal or state agencies, political subdivisions of the state, or other persons, firms, or corporations;

(7) establish and collect fees without regard to chapter 14 and section 16A.1285;

(8) accept appropriations, gifts, grants, and bequests;

(9) use money received from any source for any legal purpose or program of the board;

(10) participate in loans for agricultural resource projects in accordance with section 41A.035;

(11) provide small business development loans in accordance with section 41A.036; and

(12) guarantee or insure bonds or notes issued by the board.

Sec. 19. Minnesota Statutes 1997 Supplement, section 41D.03, subdivision 7, is amended to read:

Subd. 7. **PURCHASING INSTRUCTIONAL ITEMS.** Technical educational equipment may be procured for programs of the Minnesota center for agriculture education by the council either by brand designation or in accordance with standards and specifications the council may adopt, notwithstanding chapter ~~16B~~ 16C.

Sec. 20. Minnesota Statutes 1996, section 43A.23, subdivision 1, is amended to read:

Subdivision 1. **GENERAL.** The commissioner is authorized to request bids from carriers or to negotiate with carriers and to enter into contracts with carriers which in the judgment of the commissioner are best qualified to underwrite and service the benefit plans. Contracts entered into with carriers are not subject to the requirements of sections ~~16B.19 to 16B.22~~ 16C.16 to 16C.19. The commissioner may negotiate premium rates and coverage provisions with all carriers licensed under chapters 62A, 62C, and 62D. The commissioner may also negotiate reasonable restrictions to be applied to all carriers under chapters 62A, 62C, and 62D. Contracts to underwrite the benefit plans must be bid or negotiated separately from contracts to service the benefit plans, which may be awarded only on the basis of competitive bids. The commissioner shall consider the cost of the plans, conversion options relating to the contracts, service capabilities, character, financial position, and reputation of the carriers, and any other factors which the commissioner deems appropriate. Each benefit contract must be for a uniform term of at least one year, but may be made automatically renewable from term to term in the absence of notice of termination by either party. The commissioner shall, to the extent feasible, make hospital and medical benefits available from at least one carrier licensed to do business pursuant to each of chapters 62A, 62C, and 62D. The commissioner need not provide health maintenance organization services to an employee who resides in an area which is not served by a licensed health maintenance organization. The commissioner may refuse

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to allow a health maintenance organization to continue as a carrier. The commissioner may elect not to offer all three types of carriers if there are no bids or no acceptable bids by that type of carrier or if the offering of additional carriers would result in substantial additional administrative costs. A carrier licensed under chapter 62A is exempt from the tax imposed by section 60A.15 on premiums paid to it by the state.

Sec. 21. Minnesota Statutes 1996, section 44A.01, subdivision 1, is amended to read:

Subdivision 1. **ESTABLISHMENT.** The Minnesota world trade center corporation is a public corporation established to facilitate and support Minnesota world trade center programs and services and to promote the Minnesota world trade center. The corporation is a state agency, but is not subject to chapters 14, 16A, 16B, 16C, 43A, and 179A.

Sec. 22. Minnesota Statutes 1996, section 45.0291, is amended to read:

45.0291 DEPARTMENT BONDS.

Bonds issued under chapters 45 to 83, 309, 332, and sections 326.83 to 326.98, are not state bonds or contracts for purposes of sections 8.05 and ~~16B.06~~ 16C.05, subdivision 2.

Sec. 23. Minnesota Statutes 1997 Supplement, section 61B.21, subdivision 1, is amended to read:

Subdivision 1. **FUNCTIONS.** The Minnesota life and health insurance guaranty association shall perform its functions under the plan of operation established and approved under section 61B.25, and shall exercise its powers through a board of directors. The association is not a state agency for purposes of chapter 16A, 16B, 16C, or 43A. For purposes of administration and assessment, the association shall establish and maintain two accounts:

(1) the life insurance and annuity account which includes the following subaccounts:

- (i) the life insurance account;
 - (ii) the annuity account; and
 - (iii) the unallocated annuity account; and
- (2) the health insurance account.

Sec. 24. Minnesota Statutes 1996, section 84.025, subdivision 7, is amended to read:

Subd. 7. **CONTRACTS.** The commissioner of natural resources may contract with the federal government, local governmental units, the University of Minnesota, and other educational institutions, and private persons as may be necessary in the performance of duties. Contracts made pursuant to this section for professional services shall not be subject to the provisions of chapter ~~16B~~ 16C, as they relate to competitive bidding.

Sec. 25. Minnesota Statutes 1996, section 84.026, is amended to read:

84.026 CONTRACTS FOR PROVISION OF NATURAL RESOURCES SERVICES.

The commissioner of natural resources is authorized to enter into contractual agreements with any public or private entity for the provision of statutorily prescribed natural

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resources services by the department. The contracts shall specify the services to be provided and the amount and method of reimbursement. Funds generated in a contractual agreement made pursuant to this section shall be deposited in the special revenue fund and are appropriated to the department for purposes of providing the services specified in the contracts. All such contractual agreements shall be processed in accordance with the provisions of section ~~16B.06~~ 16C.05. The commissioner shall report revenues collected and expenditures made under this section to the chairs of the committees on appropriations in the house and finance in the senate by January 1 of each odd-numbered year.

Sec. 26. Minnesota Statutes 1996, section 84.0845, is amended to read:

84.0845 ADVANCE OF MATCHING FUNDS.

The commissioner may advance funds appropriated for fish and wildlife programs to government agencies, the National Fish and Wildlife Foundation, federally recognized Indian tribes and bands, and private, nonprofit organizations for the purposes of securing nonstate matching funds for projects involving acquisition and improvement of fish and wildlife habitat and related research and management. The commissioner shall execute agreements for contracts with the matching parties under ~~section 16B.06~~ sections 16C.03, subdivision 4, and 16C.05 prior to advancing any state funds. The agreement or contract shall contain provisions for return of the state's share and the matching funds within a period of time specified by the commissioner. The state's funds and the nonstate matching funds must be deposited in a separate account and expended solely for the purposes set forth in the agreement or contract. The commissioner shall enter into agreements or contracts only with the National Fish and Wildlife Foundation and federal and nonprofit authorities deemed by the commissioner to be dedicated to the purposes of the project.

Sec. 27. Minnesota Statutes 1996, section 85A.02, subdivision 3, is amended to read:

Subd. 3. The board may conduct research studies and programs, collect and analyze data and prepare reports, maps, charts and other information relating to the zoological garden or any wild or domestic animals or may contract for any of such services without complying with ~~chapter 16B~~ 16C.

Sec. 28. Minnesota Statutes 1997 Supplement, section 85A.02, subdivision 5b, is amended to read:

Subd. 5b. **EXEMPTIONS.** The board is not subject to sections 3.841 to 3.845, 15.057, 15.061, 16A.1285, and 16A.28; ~~chapter chapters 16B and 16C, except for sections 16B.07, 16B.102, 16B.17, 16B.19, 16B.35, and 16B.55~~ 16B.35, 16B.55, 16C.06, 16C.08, 16C.09, and 16C.16; and chapter 14, except section 14.386, paragraph (a), clauses (1) and (3). Section 14.386, paragraph (b), does not apply to the board's actions.

Sec. 29. Minnesota Statutes 1996, section 85A.02, subdivision 16, is amended to read:

Subd. 16. The board may acquire by lease-purchase or installment purchase contract, transportation systems, facilities and equipment that it determines will substantially enhance the public's opportunity to view, study or derive information concerning the animals to be located in the zoological garden, and will increase attendance at the garden. The contracts may provide for: (1) the payment of money over a 12-year period, or over a

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longer period not exceeding 25 years if approved by the board; (2) the payment of money from any funds of the board not pledged or appropriated for another purpose; (3) indemnification of the lessor or seller for damage to property or injury to persons due primarily to the actions of the board or its employees; (4) the transfer of title to the property to the board upon execution of the contract or upon payment of specified amounts; (5) the reservation to the lessor or seller of a security interest in the property; and (6) any other terms that the board determines to be commercially reasonable. Property so acquired by the board, and its purchase or use by the board, or by any nonprofit corporation having a concession from the board requiring its purchase, shall not be subject to taxation by the state or its political subdivisions. Each contract shall be subject to the provisions of chapter ~~16B~~ 16C, relating to competitive bidding, provided that, notwithstanding subdivision 5b, the board is not required to readvertise for competitive proposals for any transportation system, facilities and equipment heretofore selected from competitive proposals.

Sec. 30. Minnesota Statutes 1996, section 85A.02, subdivision 18, is amended to read:

Subd. 18. **PURCHASING.** The board may contract for supplies, materials, purchase or rental of equipment, and utility services. Except as provided in subdivision 5b, chapter ~~16B~~ 16C does not apply to these contracts.

Sec. 31. Minnesota Statutes 1996, section 103F.515, subdivision 3, is amended to read:

Subd. 3. **CONSERVATION EASEMENTS.** (a) The board may acquire, or accept by gift or donation, conservation easements on eligible land. An easement may be permanent or of limited duration. An easement acquired on land for windbreak purposes, under subdivision 2, may be only of permanent duration. An easement of limited duration may not be acquired if it is for a period less than 20 years. The negotiation and acquisition of easements authorized by this section are exempt from the contractual provisions of ~~chapter~~ chapters 16B and 16C.

(b) The board may acquire, or accept by gift or donation, flowage easements when necessary for completion of wetland restoration projects.

Sec. 32. Minnesota Statutes 1996, section 116.03, subdivision 2, is amended to read:

Subd. 2. The commissioner shall organize the agency and employ such assistants and other officers, employees and agents as the commissioner may deem necessary to discharge the functions of the commissioner's office, define the duties of such officers, employees and agents, and delegate to them any of the commissioner's powers, duties, and responsibilities, subject to the commissioner's control and under such conditions as the commissioner may prescribe. The commissioner may also contract with persons, firms, corporations, the federal government and any agency or instrumentality thereof, the water research center of the University of Minnesota or any other instrumentality of such university, for doing any of the work of the commissioner's office, and none of the provisions of chapter ~~16B~~ 16C, relating to bids, shall apply to such contracts.

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Sec. 33. Minnesota Statutes 1996, section 116J.035, subdivision 1, is amended to read:

Subdivision 1. **POWERS.** The commissioner may:

(a) apply for, receive, and expend money from municipal, county, regional, and other government agencies;

(b) apply for, accept, and disburse grants and other aids from other public or private sources;

(c) contract for professional services if such work or services cannot be satisfactorily performed by employees of the department or by any other state agency;

(d) enter into interstate compacts to jointly carry out such research and planning with other states or the federal government where appropriate;

(e) distribute informational material at no cost to the public upon reasonable request; and

(f) enter into contracts necessary for the performance of the commissioner's duties with federal, state, regional, metropolitan, local, and other agencies or units of government; educational institutions, including the University of Minnesota. Contracts made pursuant to this section shall not be subject to the competitive bidding requirements of chapter ~~16B~~ 16C.

The commissioner may apply for, receive, and expend money made available from federal or other sources for the purpose of carrying out the duties and responsibilities of the commissioner pursuant to this chapter.

All moneys received by the commissioner pursuant to this chapter shall be deposited in the state treasury and are appropriated to the commissioner for the purpose for which the moneys have been received. The money shall not cancel and shall be available until expended.

Sec. 34. Minnesota Statutes 1996, section 116J.402, is amended to read:

116J.402 **COOPERATIVE CONTRACTS.**

The commissioner of trade and economic development may apply for, receive, and spend money for community development from municipal, county, regional, and other planning agencies. The commissioner may also apply for, accept, and disburse grants and other aids for community development and related planning from the federal government and other sources. The commissioner may enter into contracts with agencies of the federal government, local governmental units, regional development commissions, and the metropolitan council, other state agencies, the University of Minnesota, and other educational institutions, and private persons as necessary to perform the commissioner's duties. Contracts made according to this section, except those with private persons, are not subject to the provisions of chapter ~~16B~~ 16C concerning competitive bidding.

The commissioner may apply for, receive, and spend money made available from federal sources or other sources for the purposes of carrying out the duties and responsibilities of the commissioner.

Money received by the commissioner under this section must be deposited in the state treasury and is appropriated to the commissioner for the purposes for which the money has been received. The money does not cancel and is available until spent.

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Sec. 35. Minnesota Statutes 1996, section 116J.58, subdivision 2, is amended to read:

Subd. 2. **PROMOTIONAL CONTRACTS.** In order to best carry out duties and responsibilities and to serve the people of the state in the promotion of tourism, trade, and economic development, the commissioner may engage in programs and projects jointly with a private person, firm, corporation or association and may enter into contracts under terms to be mutually agreed upon to carry out such programs and projects not including acquisition of land or buildings. Contracts may be negotiated and are not subject to the provisions of chapter ~~16B~~ 16C relating to competitive bidding.

Sec. 36. Minnesota Statutes 1996, section 116J.68, subdivision 2, is amended to read:

Subd. 2. The bureau shall:

(a) provide information and assistance with respect to all aspects of business planning and business management related to the start-up, operation, or expansion of a small business in Minnesota;

(b) refer persons interested in the start-up, operation, or expansion of a small business in Minnesota to assistance programs sponsored by federal agencies, state agencies, educational institutions, chambers of commerce, civic organizations, community development groups, private industry associations, and other organizations or to the business assistance referral system established by the Minnesota Project Outreach Corporation;

(c) plan, develop, and implement a master file of information on small business assistance programs of federal, state, and local governments, and other public and private organizations so as to provide comprehensive, timely information to the bureau's clients;

(d) employ staff with adequate and appropriate skills and education and training for the delivery of information and assistance;

(e) seek out and utilize, to the extent practicable, contributed expertise and services of federal, state, and local governments, educational institutions, and other public and private organizations;

(f) maintain a close and continued relationship with the director of the procurement program within the department of administration so as to facilitate the department's duties and responsibilities under sections ~~16B.19 to 16B.22~~ 16C.16 to 16C.19 relating to the small targeted group business and economically disadvantaged business program of the state;

(g) develop an information system which will enable the commissioner and other state agencies to efficiently store, retrieve, analyze, and exchange data regarding small business development and growth in the state. All executive branch agencies of state government and the secretary of state shall to the extent practicable, assist the bureau in the development and implementation of the information system;

(h) establish and maintain a toll free telephone number so that all small business persons anywhere in the state can call the bureau office for assistance. An outreach program shall be established to make the existence of the bureau well known to its potential clientele throughout the state. If the small business person requires a referral to another pro-

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vider the bureau may use the business assistance referral system established by the Minnesota Project Outreach Corporation;

- (i) conduct research and provide data as required by the state legislature;
- (j) develop and publish material on all aspects of the start-up, operation, or expansion of a small business in Minnesota;
- (k) collect and disseminate information on state procurement opportunities, including information on the procurement process;
- (l) develop a public awareness program through the use of newsletters, personal contacts, and electronic and print news media advertising about state assistance programs for small businesses, including those programs specifically for socially disadvantaged small business persons;
- (m) enter into agreements with the federal government and other public and private entities to serve as the statewide coordinator or host agency for the federal small business development center program under United States Code, title 15, section 648; and
- (n) assist providers in the evaluation of their programs and the assessment of their service area needs. The bureau may establish model evaluation techniques and performance standards for providers to use.

Sec. 37. Minnesota Statutes 1996, section 116J.966, subdivision 1, is amended to read:

Subdivision 1. **GENERALLY.** (a) The commissioner shall promote, develop, and facilitate trade and foreign investment in Minnesota. In furtherance of these goals, and in addition to the powers granted by section 116J.035, the commissioner may:

- (1) locate, develop, and promote international markets for Minnesota products and services;
- (2) arrange and lead trade missions to countries with promising international markets for Minnesota goods, technology, services, and agricultural products;
- (3) promote Minnesota products and services at domestic and international trade shows;
- (4) organize, promote, and present domestic and international trade shows featuring Minnesota products and services;
- (5) host trade delegations and assist foreign traders in contacting appropriate Minnesota businesses and investments;
- (6) develop contacts with Minnesota businesses and gather and provide information to assist them in locating and communicating with international trading or joint venture counterparts;
- (7) provide information, education, and counseling services to Minnesota businesses regarding the economic, commercial, legal, and cultural contexts of international trade;
- (8) provide Minnesota businesses with international trade leads and information about the availability and sources of services relating to international trade, such as ex-

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port financing, licensing, freight forwarding, international advertising, translation, and custom brokering;

(9) locate, attract, and promote foreign direct investment and business development in Minnesota to enhance employment opportunities in Minnesota;

(10) provide foreign businesses and investors desiring to locate facilities in Minnesota information regarding sources of governmental, legal, real estate, financial, and business services;

(11) enter into contracts or other agreements with private persons and public entities, including agreements to establish and maintain offices and other types of representation in foreign countries, to carry out the purposes of promoting international trade and attracting investment from foreign countries to Minnesota and to carry out this section, without regard to ~~sections 16B.07 and 16B.09~~ section 16C.06;

(12) enter into administrative, programming, and service partnerships with the Minnesota world trade center; and

(13) market trade-related materials to businesses and organizations, and the proceeds of which must be placed in a special revolving account and are appropriated to the commissioner to prepare and distribute trade-related materials.

(b) The programs and activities of the commissioner of trade and economic development and the Minnesota trade division may not duplicate programs and activities of the commissioner of agriculture or the Minnesota world trade center corporation.

(c) The commissioner shall notify the chairs of the senate finance and house appropriations committees of each agreement under this subdivision to establish and maintain an office or other type of representation in a foreign country.

Sec. 38. Minnesota Statutes 1997 Supplement, section 121.1113, subdivision 2, is amended to read:

Subd. 2. **DEPARTMENT OF CHILDREN, FAMILIES, AND LEARNING ASSISTANCE.** The department of children, families, and learning shall contract for professional and technical services according to competitive bidding procedures under chapter ~~16B~~ 16C for purposes of this section.

Sec. 39. Minnesota Statutes 1996, section 124.14, subdivision 1, is amended to read:

Subdivision 1. The commissioner shall supervise distribution of school aids and grants in accordance with law. It may make rules consistent with law for the distribution to enable districts to perform efficiently the services required by law and further education in the state, including reasonable requirements for the reports and accounts to it as will assure accurate and lawful apportionment of aids. State and federal aids and discretionary or entitlement grants distributed by the commissioner shall not be subject to the contract approval procedures of the commissioner of administration or to chapter ~~16A or 16B, or 16C.~~ The commissioner shall adopt internal procedures for administration and monitoring of aids and grants.

Sec. 40. Minnesota Statutes 1996, section 126.151, subdivision 2, is amended to read:

Subd. 2. **ACCOUNTS OF THE ORGANIZATION.** The commissioner and the board of trustees of the Minnesota state colleges and universities may retain dues and oth-

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er money collected on behalf of students participating in approved vocational student organizations and may deposit the money in separate accounts. The money in these accounts shall be available for expenditures for state and national activities related to specific organizations. Administration of money collected under this section is not subject to the provisions of chapters 15, 16A, and 16B, and 16C, and may be deposited outside the state treasury. Money shall be administered under the policies of the applicable state board or agency relating to post-secondary and secondary vocational student organizations and is subject to audit by the legislative auditor. Any unexpended money shall not cancel but may be carried forward to the next fiscal year.

Sec. 41. Minnesota Statutes 1996, section 129C.10, subdivision 7, is amended to read:

Subd. 7. **PURCHASING INSTRUCTIONAL ITEMS.** Technical educational equipment may be procured for programs of the Lola and Rudy Perpich Minnesota center for arts education by the board either by brand designation or in accordance with standards and specifications the board may adopt, notwithstanding ~~chapter~~ chapters 16B and 16C.

Sec. 42. Minnesota Statutes 1996, section 136A.06, is amended to read:

136A.06 FEDERAL FUNDS.

The higher education services office is designated the state agency to apply for, receive, accept, and disburse to both public and private institutions of higher education all federal funds which are allocated to the state of Minnesota to support higher education programs, construction, or other activities and which require administration by a state higher education agency under the Higher Education Facilities Act of 1963, and any amendments thereof, the Higher Education Act of 1965, and any amendments thereof, and any other law which provides funds for higher education and requires administration by a state higher education agency as enacted or may be enacted by the Congress of the United States; provided that no commitment shall be made that shall bind the legislature to make appropriations beyond current allocations of funds. The office may apply for, receive, accept, and disburse all administrative funds available to the office for administering federal funds to support higher education programs, construction, or other activities. The office also may apply for, receive, accept, and disburse any research, planning, or program funds which are available for purposes consistent with the provisions of this chapter. In making application for and administering federal funds the office may comply with any and all requirements of federal law and federal rules and regulations to enable it to receive and accept such funds. The expenditure of any such funds received shall be governed by the laws of the state, except insofar as federal regulations may otherwise provide. The office may contract with both public and private institutions in administering federal funds, and such contracts shall not be subject to the provisions of ~~chapter 16B~~ 16C. All such money received by the office shall be deposited in the state treasury and are hereby appropriated to it annually for the purpose for which such funds are received. None of such moneys shall cancel but shall be available until expended.

Sec. 43. Minnesota Statutes 1996, section 136A.16, subdivision 1, is amended to read:

Subdivision 1. Notwithstanding ~~chapter 16B~~ 16C, the Minnesota higher education services office is designated as the administrative agency for carrying out the purposes

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and terms of sections 136A.15 to 136A.1702. The office may establish one or more loan programs.

Sec. 44. Minnesota Statutes 1996, section 136A.29, subdivision 6, is amended to read:

Subd. 6. The authority is authorized and empowered to determine the location and character of any project to be financed under the provisions of sections 136A.25 to 136A.42, and to construct, reconstruct, remodel, maintain, manage, enlarge, alter, add to, repair, operate, lease, as lessee or lessor, and regulate the same, to enter into contracts for any or all of such purposes, to enter into contracts for the management and operation of a project, and to designate a participating institution of higher education as its agent to determine the location and character of a project undertaken by such participating institution of higher education under the provisions of sections 136A.25 to 136A.42 and as the agent of the authority, to construct, reconstruct, remodel, maintain, manage, enlarge, alter, add to, repair, operate, lease, as lessee or lessor, and regulate the same, and as the agent of the authority, to enter into contracts for any or all of such purposes, including contracts for the management and operation of such project. Contracts of the authority or of a participating institution of higher education to acquire or to construct, reconstruct, remodel, maintain, enlarge, alter, add to, or repair projects shall not be subject to the provisions of chapter ~~16B~~ 16C or section 574.26, or any other public contract or competitive bid law.

Sec. 45. Minnesota Statutes 1997 Supplement, section 136A.40, is amended to read:

136A.40 ADMINISTRATION.

The administration of sections 136A.25 to 136A.42, shall be under the authority independent of other departments and agencies and notwithstanding chapter ~~16B~~ 16C. The authority shall not be subject to the provisions of chapter 14, including section ~~14.386~~ in connection with the adoption of any rules, rents, fees or charges or with the exercise of any other powers or duties.

Sec. 46. Minnesota Statutes 1996, section 136F.23, is amended to read:

136F.23 STUDENT ASSOCIATIONS; PURCHASING AUTHORITY.

Notwithstanding chapter 16A or ~~16B~~ 16C, the student associations recognized by the board of trustees of the Minnesota state colleges and universities may purchase goods or materials through state purchasing authority for the ordinary day-to-day operations of the associations. The student associations must be nonprofit 501(c)(3) organizations in order to qualify for this authority. The department of administration may require that the purchase documents be approved by appropriate officials in the board's central office.

Sec. 47. Minnesota Statutes 1996, section 136F.56, subdivision 5, is amended to read:

Subd. 5. **SERVICE CONTRACTS.** The council may contract for the services it needs to carry out its function. The council may also contract to provide services to other organizations. The contracts are not subject to the contract approval procedures of the commissioner of administration or of chapter ~~16B~~ 16C.

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Sec. 48. Minnesota Statutes 1996, section 136F.581, subdivision 3, is amended to read:

Subd. 3. **PROCUREMENT FROM DESIGNATED BUSINESSES.** The policies and procedures must include provisions for procurement, including construction, from small targeted group businesses and businesses from economically disadvantaged areas designated under section ~~16B.19~~ 16C.16. The board, colleges, and universities shall use the methods contained in section ~~471.345~~, subdivision 8, for such purchasing, or may develop additional methods in which the cost percentage preferences are consistent with the provision of section ~~16B.19~~ 16C.16, subdivisions ~~2e and 2d~~ 6, paragraph (a), and 7, or consistent with the provisions of the University of Minnesota's targeted group business purchasing program.

Sec. 49. Minnesota Statutes 1996, section 136F.66, is amended to read:

136F.66 CAPITAL PROJECTS BIDDING PROCEDURES.

In awarding contracts for capital projects under section 136F.64, the board shall consider the documentation provided by the bidders regarding their qualifications, including evidence of having successfully completed similar work, or delivering services or products comparable to that being requested. The board shall set procedures to administer this section, which must include practices that will assist in the economic development of small businesses, small targeted group businesses, and businesses in economically disadvantaged areas designated under section ~~16B.19~~ 16C.16.

Sec. 50. Minnesota Statutes 1996, section 136F.72, subdivision 3, is amended to read:

Subd. 3. **ADMINISTRATION.** Each college and university, independent of other authority and notwithstanding chapters 16A and, 16B, and 16C, shall administer its activity funds. The board, independent of other authority and notwithstanding chapters 16A and, 16B, and 16C, shall administer the administrative fund established in the system office. All activity fund money collected shall be administered under the policies of the board subject to audit of the legislative auditor.

Sec. 51. Minnesota Statutes 1996, section 136F.96, is amended to read:

136F.96 ADMINISTRATION.

The administration of sections 136F.90 to 136F.98 shall be under the board of trustees of the Minnesota state colleges and universities independent of other authority and notwithstanding chapters 16A and, 16B, and 16C.

Sec. 52. Minnesota Statutes 1996, section 137.35, subdivision 1, is amended to read:

Subdivision 1. **PURCHASING METHODS.** (a) The regents may award up to a six percent preference in the amount bid for specified goods and services to small targeted group businesses designated under section ~~16B.19~~ 16C.16, subdivision 5.

(b) The regents may designate a purchase of goods or services for award only to small targeted group businesses designated under section ~~16B.19~~ 16C.16, subdivision 5, if the regents determine that at least three small targeted group businesses are likely to bid.

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(c) The regents, as a condition of awarding a construction contract or approving a contract for consultant, professional, or technical services, may set goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses. The regents must establish a procedure for granting waivers from the subcontracting requirement when qualified small targeted group businesses are not reasonably available. The regents may establish financial incentives for prime contractors who exceed the goals for use of subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph. The subcontracting requirements of this paragraph do not apply to prime contractors who are small targeted group businesses. At least 75 percent of the value of the subcontracts awarded to small targeted group businesses under this paragraph must be performed by the business to which the subcontract is awarded or by another small targeted group business.

(d) The regents may award up to a four percent preference in the amount bid on university procurement to small businesses located in an economically disadvantaged area as defined in section ~~16B.19~~ 16C.16, subdivision 7.

(e) The regents may delegate responsibility under this section to university employees.

Sec. 53. Minnesota Statutes 1996, section 137.35, subdivision 2, is amended to read:

Subd. 2. **ELIGIBILITY.** The rules adopted by the commissioner of administration to define small businesses and to set time and other eligibility requirements for participation in programs under sections ~~16B.19 to 16B.22~~ 16C.16 to 16C.19 apply to this section.

Sec. 54. Minnesota Statutes 1996, section 137.35, subdivision 3, is amended to read:

Subd. 3. **NONCOMPETITIVE BIDS.** The regents are encouraged to purchase from small targeted group businesses designated under section ~~16B.19~~ 16C.16 when making purchases that are not subject to competitive bidding procedures.

Sec. 55. Minnesota Statutes 1997 Supplement, section 138.35, subdivision 1b, is amended to read:

Subd. 1b. **CONTRACTS; VOLUNTEERS; GRANTS AND GIFTS.** The state archaeologist may contract with the federal government, local governmental units, other states, the university and other educational institutions, and private persons or organizations as necessary in the performance of the duties in sections 138.31 to 138.42. Contracts made under this section for professional services shall not be subject to chapter ~~16B~~ 16C, as it relates to competitive bidding. The state archaeologist may recruit, train, and accept, without regard to personnel laws or rules, the services of individuals as volunteers for or in aid of performance of the state archaeologist's duties, and may provide for the incidental expenses of volunteers, such as transportation, lodging, and subsistence. The state archaeologist may apply for, receive, and expend grants and gifts of money consistent with the powers and duties in sections 138.31 to 138.42. Any money so received is appropriated for the purpose for which it was granted.

Sec. 56. Minnesota Statutes 1996, section 144.0742, is amended to read:

144.0742 CONTRACTS FOR PROVISION OF PUBLIC HEALTH SERVICES.

The commissioner of health is authorized to enter into contractual agreements with any public or private entity for the provision of statutorily prescribed public health ser-

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vices by the department. The contracts shall specify the services to be provided and the amount and method of reimbursement therefor. Funds generated in a contractual agreement made pursuant to this section are appropriated to the department for purposes of providing the services specified in the contracts. All such contractual agreements shall be processed in accordance with the provisions of chapter ~~16B~~ 16C.

Sec. 57. Minnesota Statutes 1996, section 144.95, subdivision 5, is amended to read:

Subd. 5. **GENERAL AUTHORITY.** (a) To carry out subdivisions 1 to 4, the commissioner of health may:

- (1) accept money, property, or services from any source;
- (2) receive and hold lands;
- (3) accept gifts;
- (4) cooperate with city, state, federal, or private agencies whose research on mosquito control or on other environmental matters may be affected by the commissioner's mosquito management and research activities; and
- (5) enter into contracts with any public or private entity.

(b) The contracts must specify the duties performed, services provided, and the amount and method of reimbursement for them. Money collected by the commissioner under contracts made under this subdivision is appropriated to the commissioner for the purposes specified in the contracts. Contractual agreements must be processed under section ~~16B.17~~ 16C.08.

Sec. 58. Minnesota Statutes 1996, section 161.315, subdivision 4, is amended to read:

Subd. 4. **EXCEPTIONS.** The commissioner may terminate a debarment by order, or the commissioner or a county, town, or home rule or statutory city may award a contract to a debarred or suspended person when:

- (1) that person is the sole supplier of a material or service required by the commissioner or a county, town, or home rule or statutory city;
- (2) the commissioner determines that an emergency exists as defined in section 161.32, subdivision 3;
- (3) the commissioner of administration determines that an emergency exists as defined in section ~~16B.08~~ 16C.10, subdivision ~~6~~ 2;
- (4) in the case of a contract to be awarded by a county, town, or home rule or statutory city, the governing body thereof determines by resolution that an emergency exists that will result in a road, street, or bridge being closed to travel; or
- (5) the contract is for purchasing materials or renting equipment for routine road maintenance.

Sec. 59. Minnesota Statutes 1996, section 161.321, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** For purposes of this section the following terms have the meanings given them, except where the context clearly indicates a different meaning is intended.

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(a) "Award" means the granting of a contract in accordance with all applicable laws and rules governing competitive bidding except as otherwise provided in this section.

(b) "Contract" means an agreement entered into between a business entity and the state of Minnesota for the construction of transportation improvements.

(c) "Subcontractor" means a business entity which enters into a legally binding agreement with another business entity which is a party to a contract as defined in clause (b).

(d) "Targeted group business" means a business designated under section ~~16B.19~~ 16C.16, subdivision ~~2b~~ 5.

Sec. 60. Minnesota Statutes 1996, section 161.321, subdivision 2, is amended to read:

Subd. 2. **SMALL BUSINESS SET-ASIDES.** (a) The commissioner may award up to a six percent preference in the amount bid for specified construction work to small targeted group businesses.

(b) The commissioner may designate a contract for construction work for award only to small targeted group businesses if the commissioner determines that at least three small targeted group businesses are likely to bid.

(c) The commissioner, as a condition of awarding a construction contract, may set goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses. The commissioner must establish a procedure for granting waivers from the subcontracting requirement when qualified small targeted group businesses are not reasonably available. The commissioner may establish financial incentives for prime contractors who exceed the goals for use of subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph. The subcontracting requirements of this paragraph do not apply to prime contractors who are small targeted group businesses.

(d) The commissioner may award up to a four percent preference in the amount bid on procurement to small businesses located in an economically disadvantaged area as defined in section ~~16B.19~~ 16C.16, subdivision 7.

Sec. 61. Minnesota Statutes 1996, section 161.321, subdivision 5, is amended to read:

Subd. 5. **RECOURSE TO OTHER BUSINESSES.** If the commissioner is unable to award a contract pursuant to the provisions of subdivisions 2 and 3, the award may be placed pursuant to the normal solicitation and award provisions set forth in this chapter and chapter ~~16B~~ 16C.

Sec. 62. Minnesota Statutes 1996, section 161.321, subdivision 6, is amended to read:

Subd. 6. **RULES.** The rules adopted by the commissioner of administration to define small businesses and to set time and other eligibility requirements for participation in programs under sections ~~16B.19 to 16B.22~~ 16C.16 to 16C.19 apply to this section. The commissioner may promulgate other rules necessary to carry out this section.

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Sec. 63. Minnesota Statutes 1996, section 161.321, subdivision 7, is amended to read:

Subd. 7. **NONCOMPETITIVE BIDS.** The commissioner is encouraged to purchase from small targeted group businesses designated under section ~~16B.19~~ 16C.16 when making purchases that are not subject to competitive bidding procedures.

Sec. 64. Minnesota Statutes 1996, section 161.41, subdivision 2, is amended to read:

Subd. 2. **DETERMINATION OF VALUE; DISPOSITION.** The commissioner shall administer all aspects of the disposition of property declared to be surplus under this section. The commissioner shall first determine the value of the surplus property. The commissioner may then transfer the possession of the surplus property to any state agency or political subdivision of this state or to the United States government upon receipt of payment in an amount equal to the value of the surplus property.

The commissioner may also sell the surplus property under the competitive bidding provisions of chapter ~~16B~~ 16C if no state agency or political subdivision of this state offers to purchase the surplus property for its determined value.

Sec. 65. Minnesota Statutes 1997 Supplement, section 179A.03, subdivision 14, is amended to read:

Subd. 14. **PUBLIC EMPLOYEE.** "Public employee" or "employee" means any person appointed or employed by a public employer except:

- (a) elected public officials;
- (b) election officers;
- (c) commissioned or enlisted personnel of the Minnesota national guard;
- (d) emergency employees who are employed for emergency work caused by natural disaster;
- (e) part-time employees whose service does not exceed the lesser of 14 hours per week or 35 percent of the normal work week in the employee's appropriate unit;
- (f) employees whose positions are basically temporary or seasonal in character and:
(1) are not for more than 67 working days in any calendar year; or (2) are not for more than 100 working days in any calendar year and the employees are under the age of 22, are full-time students enrolled in a nonprofit or public educational institution prior to being hired by the employer, and have indicated, either in an application for employment or by being enrolled at an educational institution for the next academic year or term, an intention to continue as students during or after their temporary employment;
- (g) employees providing services for not more than two consecutive quarters to the board of trustees of the Minnesota state colleges and universities under the terms of a professional or technical services contract as defined in section ~~16B.17~~ 16C.08, subdivision 1;
- (h) employees of charitable hospitals as defined by section 179.35, subdivision 3;
- (i) full-time undergraduate students employed by the school which they attend under a work-study program or in connection with the receipt of financial aid, irrespective of number of hours of service per week;

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(j) an individual who is employed for less than 300 hours in a fiscal year as an instructor in an adult vocational education program;

(k) an individual hired by a school district or the board of trustees of the Minnesota state colleges and universities to teach one course for up to four credits for one quarter in a year.

The following individuals are public employees regardless of the exclusions of clauses (e) and (f):

(1) An employee hired by a school district or the board of trustees of the Minnesota state colleges and universities except at the university established in section 136F.13 or for community services or community education instruction offered on a noncredit basis: (i) to replace an absent teacher or faculty member who is a public employee, where the replacement employee is employed more than 30 working days as a replacement for that teacher or faculty member; or (ii) to take a teaching position created due to increased enrollment, curriculum expansion, courses which are a part of the curriculum whether offered annually or not, or other appropriate reasons; and

(2) An employee hired for a position under clause (f)(1) if that same position has already been filled under clause (f)(1) in the same calendar year and the cumulative number of days worked in that same position by all employees exceeds 67 calendar days in that year. For the purpose of this paragraph, "same position" includes a substantially equivalent position if it is not the same position solely due to a change in the classification or title of the position.

Sec. 66. Minnesota Statutes 1996, section 179A.23, is amended to read:

179A.23 LIMITATION ON CONTRACTING-OUT OF SERVICES PROVIDED BY MEMBERS OF A STATE OF MINNESOTA OR UNIVERSITY OF MINNESOTA BARGAINING UNIT.

Any contract entered into after March 23, 1982, by the state of Minnesota or the University of Minnesota involving services, any part of which, in the absence of the contract, would be performed by members of a unit provided in sections 179A.10 and 179A.11, shall be subject to section ~~46B.07~~ 16C.06 and shall provide for the preferential employment by a party of members of that unit whose employment with the state of Minnesota or the University of Minnesota is terminated as a result of that contract.

Contracts entered into by the state of Minnesota for the purpose of providing court reporter services or transcription of the record of a hearing which was recorded by means of an audio magnetic recording device shall be subject to section ~~46B.17~~ 16C.08 and the preferential employment provisions enumerated in this section. Any court reporter seeking a contract pursuant to the preferential employment provisions of this section shall be given preference when the services are needed only if that court reporter's charges for the services requested are no greater than the average of the charges made for the identical services by other court reporters in the same locality who are also under contract with the state for those services.

Sec. 67. Minnesota Statutes 1996, section 198.35, subdivision 1, is amended to read:

Subdivision 1. **ESTABLISHMENT.** The board may establish a veterans home in Silver Bay by renovating an existing facility owned by the city of Silver Bay if the city

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donates the building to the board at no cost. Contracts made by the board for the purposes of this subdivision are subject to chapter ~~16B~~ 16C. Buildings used for the veterans home must comply with requirements established by federal agencies as conditions for the receipt of federal funds for the nursing and boarding care of veterans. The city of Silver Bay shall secure the state match requirement from sources other than the state general fund. Money from other sources must equal at least 35 percent of the total cost of the renovation with the remainder of the funds to be provided by the United States Veterans Administration.

Sec. 68. Minnesota Statutes 1996, section 216C.02, subdivision 1, is amended to read:

Subdivision 1. **POWERS.** (a) The commissioner may:

(1) apply for, receive, and spend money received from federal, municipal, county, regional, and other government agencies and private sources;

(2) apply for, accept, and disburse grants and other aids from public and private sources;

(3) contract for professional services if work or services required or authorized to be carried out by the commissioner cannot be satisfactorily performed by employees of the department or by another state agency;

(4) enter into interstate compacts to carry out research and planning jointly with other states or the federal government when appropriate;

(5) upon reasonable request, distribute informational material at no cost to the public; and

(6) enter into contracts for the performance of the commissioner's duties with federal, state, regional, metropolitan, local, and other agencies or units of government and educational institutions, including the University of Minnesota, without regard to the competitive bidding requirements of chapters 16A and ~~16B~~ 16C.

(b) The commissioner shall collect information on conservation and other energy-related programs carried on by other agencies, by public utilities, by cooperative electric associations, by municipal power agencies, by other fuel suppliers, by political subdivisions, and by private organizations. Other agencies, cooperative electric associations, municipal power agencies, and political subdivisions shall cooperate with the commissioner by providing information requested by the commissioner. The commissioner may by rule require the submission of information by other program operators. The commissioner shall make the information available to other agencies and to the public and, as necessary, shall recommend to the legislature changes in the laws governing conservation and other energy-related programs to ensure that:

(1) expenditures on the programs are adequate to meet identified needs;

(2) the needs of low-income energy users are being adequately addressed;

(3) duplication of effort is avoided or eliminated;

(4) a program that is ineffective is improved or eliminated; and

(5) voluntary efforts are encouraged through incentives for their operators.

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The commissioner shall appoint an advisory task force to help evaluate the information collected and formulate recommendations to the legislature. The task force must include low-income energy users.

(c) By January 15 of each year, the commissioner shall report to the legislature on the projected amount of federal money likely to be available to the state during the next fiscal year, including grant money and money received by the state as a result of litigation or settlements of alleged violations of federal petroleum pricing regulations. The report must also estimate the amount of money projected as needed during the next fiscal year to finance a level of conservation and other energy-related programs adequate to meet projected needs, particularly the needs of low-income persons and households, and must recommend the amount of state appropriations needed to cover the difference between the projected availability of federal money and the projected needs.

Sec. 69. Minnesota Statutes 1997 Supplement, section 216D.03, subdivision 2, is amended to read:

Subd. 2. **ESTABLISHMENT OF NOTIFICATION CENTER; RULES.** (a) The notification center services must be provided by a nonprofit corporation approved in writing by the commissioner. The nonprofit corporation must be governed by a board of directors of up to 20 members, one of whom is the director of the office of pipeline safety. The other board members must represent and be elected by operators, excavators, and other persons eligible to participate in the center. In deciding to approve a nonprofit corporation, the commissioner shall consider whether it meets the requirements of this paragraph and whether it demonstrates that it has the ability to contract for and implement the notification center service.

(b) The commissioner shall adopt rules:

(1) establishing a notification process and competitive bidding procedure for selecting a vendor to provide the notification service;

(2) governing the operating procedures and technology needed for a statewide notification center; and

(3) setting forth the method for assessing the cost of the service among operators.

(c) The commissioner shall select a vendor to provide the notification center service. The commissioner may advertise for bids as provided in section ~~16B.07~~ 16C.06, subdivision ~~3~~ 3 subdivisions 1 and 2, and base the selection of a vendor on an identification of the ~~lowest responsible bidder~~ best value as provided in section ~~16B.09~~ 16C.06, subdivision ~~1~~ 6. The commissioner shall select and contract with the vendor to provide the notification center service, but all costs of the center must be paid by the operators. The commissioner may at any time appoint a task force to advise on the renewal of the contract or any other matter involving the center's operations.

(d) An operator may submit a bid and be selected to contract to provide the notification center service under paragraph (a) or (c). The commissioner shall annually review the services provided by the nonprofit corporation approved under paragraph (a) or the vendor selected under paragraph (c).

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Sec. 70. Minnesota Statutes 1996, section 237.51, subdivision 5a, is amended to read:

Subd. 5a. **DEPARTMENT OF HUMAN SERVICES; DUTIES.** (a) In addition to any duties specified elsewhere in sections 237.51 to 237.56, the department of human services shall:

(1) define economic hardship, special needs, and household criteria so as to determine the priority of eligible applicants for initial distribution of devices and to determine circumstances necessitating provision of more than one communication device per household;

(2) establish a method to verify eligibility requirements;

(3) establish specifications for communication devices to be purchased under section 237.53, subdivision 3;

(4) inform the public and specifically the community of communication-impaired persons of the program; and

(5) notwithstanding any provision of ~~chapter~~ chapters 16B and 16C, develop guidelines for the purchase of some communication devices from local retailers and dispensers if the department determines that otherwise they will be economically harmed by implementation of sections 237.50 to 237.56.

(b) The department may establish an advisory board to advise the department in carrying out the duties specified in this section and to advise the department of public service in carrying out its duties under section 237.54. If so established, the advisory board must include, at a minimum, the following communication-impaired persons:

(1) at least one member who is deaf;

(2) at least one member who is speech impaired;

(3) at least one member who is mobility impaired; and

(4) at least one member who is hard-of-hearing.

The membership terms, compensation, and removal of members and the filling of membership vacancies are governed by section 15.059. Advisory board meetings shall be held at the discretion of the commissioner.

Sec. 71. Minnesota Statutes 1996, section 241.0221, subdivision 6, is amended to read:

Subd. 6. **APPLICATION REVIEW PROCESS FOR SUBSIDY FUNDS.** To qualify for a subsidy, a county or group of counties must enter into a memorandum of agreement with the commissioner agreeing to comply with the minimum standards and requirements established by the commissioner under subdivision 4. The memorandum of agreement is not subject to the contract approval procedures of the commissioner of administration or ~~chapter~~ chapters 16B and 16C. The commissioner shall provide forms and instructions for submission of subsidy applications.

The commissioner shall require a county or group of counties to document in its application that it is requesting subsidy funds for the least restrictive alternative appropriate

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to the county or counties detention needs. The commissioner shall evaluate applications and grant subsidies for local detention facilities and alternative detention programs described in this section in a manner consistent with the minimum standards and requirements established by the commissioner in subdivision 4 and within the limit appropriations made available by law.

Sec. 72. Minnesota Statutes 1996, section 241.27, subdivision 2, is amended to read:

Subd. 2. **REVOLVING FUND; USE OF FUND.** There is established in the department of corrections under the control of the commissioner of corrections the Minnesota correctional industries revolving fund to which shall be transferred the revolving funds authorized in Minnesota Statutes 1978, sections 243.41 and 243.85, clause (f), and any other industrial revolving funds heretofore established at any state correctional facility under the control of the commissioner of corrections. The revolving fund established shall be used for the conduct of the industrial and commercial activities now or hereafter established at any state correctional facility, including but not limited to the purchase of equipment, raw materials, the payment of salaries, wages and other expenses necessary and incident thereto. The purchase of materials and commodities for resale are not subject to the competitive bidding procedures of section ~~16B.07~~ 16C.06, but are subject to all other provisions of ~~chapter 16B~~ chapters 16B and 16C. When practical, purchases must be made from small targeted group businesses designated under section ~~16B.19~~ 16C.16. Additionally, the expenses of inmate vocational training and the inmate release fund may be financed from the correctional industries revolving fund in an amount to be determined by the commissioner. The proceeds and income from all industrial and commercial activities conducted at state correctional facilities shall be deposited in the correctional industries revolving fund subject to disbursement as hereinabove provided. The commissioner of corrections may request that money in the fund be invested pursuant to section 11A.25; the proceeds from the investment not currently needed shall be accounted for separately and credited to the fund.

Sec. 73. Minnesota Statutes 1997 Supplement, section 241.277, subdivision 2, is amended to read:

Subd. 2. **REQUEST FOR PROPOSALS.** After consulting with and considering the advice of the association of Minnesota counties, the commissioner may issue a request for proposals and select a vendor to operate the program. Section ~~16B.17~~ 16C.08 does not apply to the issuance of the request for proposals.

Sec. 74. Minnesota Statutes 1996, section 246.36, is amended to read:

246.36 ACCEPTANCE OF VOLUNTARY, UNCOMPENSATED SERVICES.

For the purpose of carrying out a duty, the commissioner of human services shall have authority to accept uncompensated and voluntary services and to enter into contracts or agreements with private or public agencies, or persons, for uncompensated and voluntary services, as the commissioner may deem practicable. Uncompensated and voluntary services do not include services mandated by licensure and certification requirements for health care facilities. The volunteer agencies, organizations, or persons who provide services to residents of state facilities operated under the authority of the commissioner are not subject to the procurement requirements of chapters 16A and ~~16B~~ 16C. The agencies, organizations, or persons may purchase supplies, services, and equipment

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to be used in providing services to residents of state facilities through the department of administration.

Sec. 75. Minnesota Statutes 1996, section 246.57, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZED.** The commissioner of human services may authorize any state facility operated under the authority of the commissioner to enter into agreement with other governmental entities and both nonprofit and for-profit organizations for participation in shared service agreements that would be of mutual benefit to the state, other governmental entities and organizations involved, and the public. Notwithstanding section ~~16B.06~~ 16C.05, subdivision 2, the commissioner of human services may delegate the execution of shared services contracts to the chief executive officers of the regional centers or state operated nursing homes. No additional employees shall be added to the legislatively approved complement for any regional center or state nursing home as a result of entering into any shared service agreement. However, positions funded by a shared service agreement may be authorized by the commissioner of finance for the duration of the shared service agreement. The charges for the services shall be on an actual cost basis. All receipts for shared services may be retained by the regional treatment center or state-operated nursing home that provided the services, in addition to other funding the regional treatment center or state-operated nursing home receives.

Sec. 76. Minnesota Statutes 1996, section 246.57, subdivision 6, is amended to read:

Subd. 6. **DENTAL SERVICES.** The commissioner of human services shall authorize any regional treatment center or state-operated nursing home under the commissioner's authority to provide dental services to disabled persons who are eligible for medical assistance and are not residing at the regional treatment center or state-operated nursing home, provided that the reimbursement received for these services is sufficient to cover actual costs. To provide these services, regional treatment centers and state-operated nursing homes may participate under contract with health networks in their service area. Notwithstanding section ~~16B.06~~ 16C.05, subdivision 2, the commissioner of human services may delegate the execution of these dental services contracts to the chief executive officers of the regional centers or state-operated nursing homes. All receipts for these dental services shall be retained by the regional treatment center or state-operated nursing home that provides the services and shall be in addition to other funding the regional treatment center or state-operated nursing home receives.

Sec. 77. Minnesota Statutes 1996, section 256B.031, subdivision 1, is amended to read:

Subdivision 1. **CONTRACTS.** The commissioner may contract with health insurers licensed and operating under chapters 60A and 62A, nonprofit health service plans licensed and operating under chapter 62C, health maintenance organizations licensed and operating under chapter 62D, and vendors of medical care and organizations participating in prepaid programs under section 256D.03, subdivision 4, clause (b), to provide medical services to medical assistance recipients. Notwithstanding any other law, health insurers may enter into contracts with the commissioner under this section. As a condition of the contract, health insurers and health service plan corporations must agree to comply with the requirements of section 62D.04, subdivision 1, clauses (a), (b), (c), (d), and (f), and provide a complaint procedure that satisfies the requirements of section 62D.11. Nothing in this section permits health insurers not licensed as health mainte-

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nance organizations under chapter 62D to offer a prepaid health plan as defined in section 256B.02, subdivision 12, to persons other than those receiving medical assistance or general assistance medical care under this section. Contracts between the commissioner and a prepaid health plan are exempt from the set-aside and preference provisions of section ~~16B.19~~ 16C.16, subdivisions ~~5 and 6~~, paragraph (a), and 7. Contracts must specify the services that are included in the per capita rate. Contracts must specify those services that are to be eligible for risk sharing between the prepaid health plan and the state. Contracts must also state that payment must be made within 60 days after the month of coverage.

Sec. 78. Minnesota Statutes 1996, section 256B.04, subdivision 14, is amended to read:

Subd. 14. **COMPETITIVE BIDDING.** When determined to be effective, economical, and feasible, the commissioner may utilize volume purchase through competitive bidding and negotiation under the provisions of chapter ~~16B~~ 16C, to provide items under the medical assistance program including but not limited to the following:

(1) eyeglasses;

(2) oxygen. The commissioner shall provide for oxygen needed in an emergency situation on a short-term basis, until the vendor can obtain the necessary supply from the contract dealer;

(3) hearing aids and supplies; and

(4) durable medical equipment, including but not limited to:

(a) hospital beds;

(b) commodes;

(c) glide-about chairs;

(d) patient lift apparatus;

(e) wheelchairs and accessories;

(f) oxygen administration equipment;

(g) respiratory therapy equipment;

(h) electronic diagnostic, therapeutic and life support systems;

(5) special transportation services; and

(6) drugs.

Sec. 79. Minnesota Statutes 1996, section 256B.04, subdivision 15, is amended to read:

Subd. 15. **UTILIZATION REVIEW.** (1) Establish on a statewide basis a new program to safeguard against unnecessary or inappropriate use of medical assistance services, against excess payments, against unnecessary or inappropriate hospital admissions or lengths of stay, and against underutilization of services in prepaid health plans, long-term care facilities or any health care delivery system subject to fixed rate reimbursement. In implementing the program, the state agency shall utilize both prepayment

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and postpayment review systems to determine if utilization is reasonable and necessary. The determination of whether services are reasonable and necessary shall be made by the commissioner in consultation with a professional services advisory group or health care consultant appointed by the commissioner.

(2) Contracts entered into for purposes of meeting the requirements of this subdivision shall not be subject to the set-aside provisions of chapter ~~16B~~ 16C.

(3) A recipient aggrieved by the commissioner's termination of services or denial of future services may appeal pursuant to section 256.045. A vendor aggrieved by the commissioner's determination that services provided were not reasonable or necessary may appeal pursuant to the contested case procedures of chapter 14. To appeal, the vendor shall notify the commissioner in writing within 30 days of receiving the commissioner's notice. The appeal request shall specify each disputed item, the reason for the dispute, an estimate of the dollar amount involved for each disputed item, the computation that the vendor believes is correct, the authority in statute or rule upon which the vendor relies for each disputed item, the name and address of the person or firm with whom contacts may be made regarding the appeal, and other information required by the commissioner.

(4) The commissioner may select providers to provide case management services to recipients who use health care services inappropriately or to recipients who are eligible for other managed care projects. The providers shall be selected based upon criteria that may include a comparison with a peer group of providers related to the quality, quantity, or cost of health care services delivered or a review of sanctions previously imposed by health care services programs or the provider's professional licensing board.

Sec. 80. Minnesota Statutes 1997 Supplement, section 256B.19, subdivision 2a, is amended to read:

Subd. 2a. **DIVISION OF COSTS.** The county shall ensure that only the least costly, most appropriate transportation and travel expenses are used. The state may enter into volume purchase contracts, or use a competitive bidding process, whenever feasible, to minimize the costs of transportation services. If the state has entered into a volume purchase contract or used the competitive bidding procedures of chapter ~~16B~~ 16C to arrange for transportation services, the county may be required to use such arrangements.

Sec. 81. Minnesota Statutes 1997 Supplement, section 256D.03, subdivision 6, is amended to read:

Subd. 6. **DIVISION OF COSTS.** The state share of county agency expenditures for general assistance medical care shall be 100 percent. Payments made under this subdivision shall be made according to sections 256B.041, subdivision 5 and 256B.19, subdivision 1. In counties where a pilot or demonstration project is operated for general assistance medical care services, the state may pay 100 percent of the costs of administering the pilot or demonstration project.

Notwithstanding any provision to the contrary, beginning July 1, 1991, the state shall pay 100 percent of the costs for centralized claims processing by the department of administration relative to claims beginning January 1, 1991, and submitted on behalf of general assistance medical care recipients by vendors in the general assistance medical care program.

Beginning July 1, 1991, the state shall reimburse counties up to the limit of state appropriations for general assistance medical care common carrier transportation and re-

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lated travel expenses provided for medical purposes after December 31, 1990. For purposes of this subdivision, transportation shall have the meaning given it in Code of Federal Regulations, title 42, section 440.170(a), as amended through October 1, 1987, and travel expenses shall have the meaning given in Code of Federal Regulations, title 42, section 440.170(a)(3), as amended through October 1, 1987.

The county shall ensure that only the least costly most appropriate transportation and travel expenses are used. The state may enter into volume purchase contracts, or use a competitive bidding process, whenever feasible, to minimize the costs of transportation services. If the state has entered into a volume purchase contract or used the competitive bidding procedures of chapter ~~16B~~ 16C to arrange for transportation services, the county may be required to use such arrangements to be eligible for state reimbursement for general assistance medical care common carrier transportation and related travel expenses provided for medical purposes.

In counties where prepaid health plans are under contract to the commissioner to provide services to general assistance medical care recipients, the cost of court ordered treatment that does not include diagnostic evaluation, recommendation, or referral for treatment by the prepaid health plan is the responsibility of the county of financial responsibility.

Sec. 82. Minnesota Statutes 1996, section 298.2211, subdivision 4, is amended to read:

Subd. 4. **OBLIGATIONS NOT STATE DEBT.** Bonds and other obligations issued by the commissioner pursuant to this section, along with all related documents, are not general obligations of the state of Minnesota and are not subject to ~~section 16B.06~~ sections 16C.03, subdivision 4, and 16C.05. The full faith and credit and taxing powers of the state are not and may not be pledged for the payment of these bonds or other obligations, and no person has the right to compel the levy of any state tax for their payment or to compel the appropriation of any moneys of the state for their payment except as specifically provided herein. These bonds and obligations shall be payable solely from the property and moneys derived by the commissioner pursuant to the authority granted in this section that the commissioner pledges to their payment. The legislature intends not to appropriate money from the general fund to pay for these bonds or other obligations. All these bonds or other obligations must contain the provisions of this subdivision or words to the same effect on their face.

Sec. 83. Minnesota Statutes 1996, section 349A.06, subdivision 1, is amended to read:

Subdivision 1. **CONTRACTS.** The director shall sell tickets for the lottery through lottery retailers with whom the director contracts. Contracts under this section are not subject to the provisions of ~~sections 16B.06 to 16B.102, and 16B.17~~ 16C.03, 16C.05, 16C.06, 16C.08, 16C.09, and 16C.10, and are valid for a period of one year. The director may permit a retailer to sell tickets at more than one business location under a contract entered into under this section.

Sec. 84. Minnesota Statutes 1996, section 349A.07, subdivision 6, is amended to read:

Subd. 6. **EXEMPTIONS.** Lottery procurement contracts entered into by the director are not subject to the provisions of ~~sections 16B.06 to 16B.102 or 16B.17~~ section

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16C.03, 16C.05, 16C.06, 16C.08, 16C.09, or 16C.10, provided that the director must utilize an open and competitive bid process, and as nearly as practicable follow the procedures of chapter chapters 16B and 16C governing contracts, consistent with the provisions of this section.

Sec. 85. Minnesota Statutes 1996, section 352.03, subdivision 6, is amended to read:
Subd. 6. DUTIES AND POWERS OF EXECUTIVE DIRECTOR. The management of the system is vested in the director, who is the executive and administrative head of the system. The director shall be advisor to the board on matters pertaining to the system and shall also act as the secretary of the board. The director shall:

- (1) attend meetings of the board;
- (2) prepare and recommend to the board appropriate rules to carry out this chapter;
- (3) establish and maintain an adequate system of records and accounts following recognized accounting principles and controls;
- (4) designate an assistant director with the approval of the board;
- (5) appoint any employees, both permanent and temporary, that are necessary to carry out the provisions of this chapter;

(6) organize the work of the system as the director deems necessary to fulfill the functions of the system, and define the duties of its employees and delegate to them any powers or duties, subject to the control of the director and under conditions the director may prescribe. Appointments to exercise delegated power must be by written order and shall be filed with the secretary of state;

(7) with the advice and consent of the board, contract for the services of an approved actuary, professional management services, and any other consulting services as necessary and fix the compensation for those services. The contracts are not subject to competitive bidding under chapter 16B 16C. Any approved actuary retained by the executive director shall function as the actuarial advisor of the board and the executive director, and may perform actuarial valuations and experience studies to supplement those performed by the actuary retained by the legislative commission on pensions and retirement. Any supplemental actuarial valuations or experience studies shall be filed with the executive director of the legislative commission on pensions and retirement. Professional management services may not be contracted for more often than once in six years. Copies of professional management survey reports must be transmitted to the secretary of the senate, the chief clerk of the house of representatives, and the legislative reference library as provided by section 3.195, to the executive director of the commission and to the legislative auditor at the time as reports are furnished to the board. Only management firms experienced in conducting management surveys of federal, state, or local public retirement systems are qualified to contract with the director;

(8) with the advice and consent of the board provide in-service training for the employees of the system;

(9) make refunds of accumulated contributions to former state employees and to the designated beneficiary, surviving spouse, legal representative, or next of kin of deceased state employees or deceased former state employees, as provided in this chapter;

(10) determine the amount of the annuities and disability benefits of employees covered by the system and authorize payment of the annuities and benefits beginning as of the dates on which the annuities and benefits begin to accrue, in accordance with the provisions of this chapter;

(11) pay annuities, refunds, survivor benefits, salaries, and necessary operating expenses of the system;

(12) certify funds available for investment to the state board of investment;

(13) with the advice and approval of the board request the state board of investment to sell securities when the director determines that funds are needed for the system;

(14) prepare and submit to the board and the legislature an annual financial report covering the operation of the system, as required by section 356.20;

(15) prepare and submit biennial and annual budgets to the board and with the approval of the board submit the budgets to the department of finance; and

(16) with the approval of the board, perform other duties required to administer the retirement and other provisions of this chapter and to do its business.

Sec. 86. Minnesota Statutes 1996, section 352.03, subdivision 16, is amended to read:

Subd. 16. **DATA PROCESSING SERVICES.** Notwithstanding chapter 16B~~7~~ or 16C or any law to the contrary, the executive director of the system may use the services of the department of administration, information services division, for electronic data processing and related services or may contract for all or a part of the services.

Sec. 87. Minnesota Statutes 1997 Supplement, section 353.03, subdivision 3a, is amended to read:

Subd. 3a. **EXECUTIVE DIRECTOR.** (a) **APPOINTMENT.** The board shall appoint, with the advice and consent of the senate, an executive director on the basis of education, experience in the retirement field, and leadership ability. The executive director shall have had at least five years' experience in an executive level management position, which has included responsibility for pensions, deferred compensation, or employee benefits. The executive director serves at the pleasure of the board. The salary of the executive director is as provided by section 15A.0815.

(b) **DUTIES.** The management of the association is vested in the executive director who shall be the executive and administrative head of the association. The executive director shall act as adviser to the board on all matters pertaining to the association and shall also act as the secretary of the board. The executive director shall:

(1) attend all meetings of the board;

(2) prepare and recommend to the board appropriate rules to carry out the provisions of this chapter;

(3) establish and maintain an adequate system of records and accounts following recognized accounting principles and controls;

(4) designate, with the approval of the board, up to two persons who shall serve in the unclassified service and whose salary is set in accordance with section 43A.18, subdi-

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vision 3, appoint a confidential secretary in the unclassified service, and appoint employees to carry out this chapter, who are subject to chapters 43A and 179A in the same manner as are executive branch employees;

(5) organize the work of the association as the director deems necessary to fulfill the functions of the association, and define the duties of its employees and delegate to them any powers or duties, subject to the control of, and under such conditions as, the executive director may prescribe;

(6) with the approval of the board, contract for the services of an approved actuary, professional management services, and any other consulting services as necessary to fulfill the purposes of this chapter. All contracts are subject to chapter ~~16B~~ 16C. The commissioner of administration shall not approve, and the association shall not enter into, any contract to provide lobbying services or legislative advocacy of any kind. Any approved actuary retained by the executive director shall function as the actuarial advisor of the board and the executive director and may perform actuarial valuations and experience studies to supplement those performed by the actuary retained by the legislative commission on pensions and retirement. Any supplemental actuarial valuations or experience studies shall be filed with the executive director of the legislative commission on pensions and retirement. Copies of professional management survey reports shall be transmitted to the secretary of the senate, the chief clerk of the house of representatives, and the legislative reference library as provided by section 3.195, to the executive director of the commission and to the legislative auditor at the same time as reports are furnished to the board. Only management firms experienced in conducting management surveys of federal, state, or local public retirement systems shall be qualified to contract with the director hereunder;

(7) with the approval of the board provide in-service training for the employees of the association;

(8) make refunds of accumulated contributions to former members and to the designated beneficiary, surviving spouse, legal representative or next of kin of deceased members or deceased former members, as provided in this chapter;

(9) determine the amount of the annuities and disability benefits of members covered by the association and authorize payment of the annuities and benefits beginning as of the dates on which the annuities and benefits begin to accrue, in accordance with the provisions of this chapter;

(10) pay annuities, refunds, survivor benefits, salaries, and necessary operating expenses of the association;

(11) prepare and submit to the board and the legislature an annual financial report covering the operation of the association, as required by section 356.20;

(12) prepare and submit biennial and annual budgets to the board for its approval and submit the approved budgets to the department of finance for approval by the commissioner;

(13) reduce all or part of the accrued interest payable under section 353.27, subdivisions 12, 12a, and 12b, or 353.28, subdivision 5, upon receipt of proof by the association of an unreasonable processing delay or other extenuating circumstances of the employing unit. The executive director shall prescribe and submit for approval by the board the conditions under which such interest may be reduced; and

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(14) with the approval of the board, perform such other duties as may be required for the administration of the association and the other provisions of this chapter and for the transaction of its business.

Sec. 88. Minnesota Statutes 1996, section 354.06, subdivision 2a, is amended to read:

Subd. 2a. **DUTIES OF EXECUTIVE DIRECTOR.** The management of the association is vested in the executive director who shall be the executive and administrative head of the association. The executive director shall act as advisor to the board on all matters pertaining to the association and shall also act as the secretary of the board. The executive director shall:

- (1) attend all meetings of the board;
- (2) prepare and recommend to the board appropriate rules to carry out the provisions of this chapter;
- (3) establish and maintain an adequate system of records and accounts following recognized accounting principles and controls;
- (4) designate an assistant executive director in the unclassified service and two assistant executive directors in the classified service with the approval of the board, and appoint such employees, both permanent and temporary, as are necessary to carry out the provisions of this chapter;
- (5) organize the work of the association as the director deems necessary to fulfill the functions of the association, and define the duties of its employees and delegate to them any powers or duties, subject to the director's control and under such conditions as the director may prescribe;
- (6) with the approval of the board, contract and set the compensation for the services of an approved actuary, professional management services, and any other consulting services. These contracts are not subject to the competitive bidding procedure prescribed by chapter ~~16B~~ 16C. An approved actuary retained by the executive director shall function as the actuarial advisor of the board and the executive director and may perform actuarial valuations and experience studies to supplement those performed by the actuary retained by the legislative commission on pensions and retirement. Any supplemental actuarial valuations or experience studies shall be filed with the executive director of the legislative commission on pensions and retirement. Copies of professional management survey reports must be transmitted to the secretary of the senate, the chief clerk of the house of representatives, and the legislative reference library as provided by section 3.195, to the executive director of the commission and to the legislative auditor at the same time as reports are furnished to the board. Only management firms experienced in conducting management surveys of federal, state, or local public retirement systems are qualified to contract with the executive director;
- (7) with the approval of the board, provide in-service training for the employees of the association;
- (8) make refunds of accumulated contributions to former members and to the designated beneficiary, surviving spouse, legal representative, or next of kin of deceased members or deceased former members, under this chapter;

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(9) determine the amount of the annuities and disability benefits of members covered by the association and authorize payment of the annuities and benefits beginning as of the dates on which the annuities and benefits begin to accrue, under this chapter;

(10) pay annuities, refunds, survivor benefits, salaries, and necessary operating expenses of the association;

(11) prepare and submit to the board and the legislature an annual financial report covering the operation of the association, as required by section 356.20;

(12) certify funds available for investment to the state board of investment;

(13) with the advice and approval of the board, request the state board of investment to sell securities on determining that funds are needed for the purposes of the association;

(14) prepare and submit biennial and annual budgets to the board and with the approval of the board submit those budgets to the department of finance; and

(15) with the approval of the board, perform such other duties as may be required for the administration of the association and the other provisions of this chapter and for the transaction of its business. The executive director may:

(i) reduce all or part of the accrued interest and fines payable by an employing unit for reporting requirements under section 354.52, based on an evaluation of any extenuating circumstances of the employing unit;

(ii) assign association employees to conduct field audits of an employing unit to ensure compliance with the provisions of this chapter; and

(iii) recover overpayments, if not repaid to the association, by suspending or reducing the payment of a retirement annuity, refund, disability benefit, survivor benefit, or optional annuity under this chapter until the overpayment, plus interest, has been recovered.

Sec. 89. Minnesota Statutes 1996, section 354.07, subdivision 7, is amended to read:

Subd. 7. Notwithstanding chapter 16B, or 16C or any law to the contrary, the board may use the services of the department of administration, information services division, for electronic data processing and related services or may contract for all or a portion of such services.

Sec. 90. Minnesota Statutes 1996, section 356A.06, subdivision 7, is amended to read:

Subd. 7. **EXPANDED LIST OF AUTHORIZED INVESTMENT SECURITIES.** (a) **AUTHORITY.** Except to the extent otherwise authorized by law or bylaws, a covered pension plan not described by subdivision 6, paragraph (a), may invest its assets only in accordance with this subdivision.

(b) **SECURITIES GENERALLY.** The covered pension plan has the authority to purchase, sell, lend, or exchange the securities specified in paragraphs (c) to (g), including puts and call options and future contracts traded on a contract market regulated by a governmental agency or by a financial institution regulated by a governmental agency. These securities may be owned as units in commingled trusts that own the securities described in paragraphs (c) to (g).

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(c) **GOVERNMENT OBLIGATIONS.** The covered pension plan may invest funds in governmental bonds, notes, bills, mortgages, and other evidences of indebtedness provided the issue is backed by the full faith and credit of the issuer or the issue is rated among the top four quality rating categories by a nationally recognized rating agency. The obligations in which funds may be invested under this paragraph include guaranteed or insured issues of (1) the United States, its agencies, its instrumentalities, or organizations created and regulated by an act of Congress; (2) Canada and its provinces, provided the principal and interest is payable in United States dollars; (3) the states and their municipalities, political subdivisions, agencies, or instrumentalities; (4) the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, or any other United States government sponsored organization of which the United States is a member, provided the principal and interest is payable in United States dollars.

(d) **CORPORATE OBLIGATIONS.** The covered pension plan may invest funds in bonds, notes, debentures, transportation equipment obligations, or any other longer term evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States or any state thereof, or the Dominion of Canada or any province thereof if they conform to the following provisions:

(1) the principal and interest of obligations of corporations incorporated or organized under the laws of the Dominion of Canada or any province thereof must be payable in United States dollars; and

(2) obligations must be rated among the top four quality categories by a nationally recognized rating agency.

(e) **OTHER OBLIGATIONS.** (1) The covered pension plan may invest funds in bankers acceptances, certificates of deposit, deposit notes, commercial paper, mortgage participation certificates and pools, asset backed securities, repurchase agreements and reverse repurchase agreements, guaranteed investment contracts, savings accounts, and guaranty fund certificates, surplus notes, or debentures of domestic mutual insurance companies if they conform to the following provisions:

(i) bankers acceptances and deposit notes of United States banks are limited to those issued by banks rated in the highest four quality categories by a nationally recognized rating agency;

(ii) certificates of deposit are limited to those issued by (A) United States banks and savings institutions that are rated in the highest four quality categories by a nationally recognized rating agency or whose certificates of deposit are fully insured by federal agencies; or (B) credit unions in amounts up to the limit of insurance coverage provided by the National Credit Union Administration;

(iii) commercial paper is limited to those issued by United States corporations or their Canadian subsidiaries and rated in the highest two quality categories by a nationally recognized rating agency;

(iv) mortgage participation or pass through certificates evidencing interests in pools of first mortgages or trust deeds on improved real estate located in the United States where the loan to value ratio for each loan as calculated in accordance with section 61A.28, subdivision 3, does not exceed 80 percent for fully amortizable residential properties and in all other respects meets the requirements of section 61A.28, subdivision 3;

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(v) collateral for repurchase agreements and reverse repurchase agreements is limited to letters of credit and securities authorized in this section;

(vi) guaranteed investment contracts are limited to those issued by insurance companies or banks rated in the top four quality categories by a nationally recognized rating agency or to alternative guaranteed investment contracts where the underlying assets comply with the requirements of this subdivision;

(vii) savings accounts are limited to those fully insured by federal agencies; and

(viii) asset backed securities must be rated in the top four quality categories by a nationally recognized rating agency.

(2) Sections 16A.58 and ~~16B.06~~, 16C.03, subdivision 4, and 16C.05 do not apply to certificates of deposit and collateralization agreements executed by the covered pension plan under clause (1), item (ii).

(3) In addition to investments authorized by clause (1), item (iv), the covered pension plan may purchase from the Minnesota housing finance agency all or any part of a pool of residential mortgages, not in default, that has previously been financed by the issuance of bonds or notes of the agency. The covered pension plan may also enter into a commitment with the agency, at the time of any issue of bonds or notes, to purchase at a specified future date, not exceeding 12 years from the date of the issue, the amount of mortgage loans then outstanding and not in default that have been made or purchased from the proceeds of the bonds or notes. The covered pension plan may charge reasonable fees for any such commitment and may agree to purchase the mortgage loans at a price sufficient to produce a yield to the covered pension plan comparable, in its judgment, to the yield available on similar mortgage loans at the date of the bonds or notes. The covered pension plan may also enter into agreements with the agency for the investment of any portion of the funds of the agency. The agreement must cover the period of the investment, withdrawal privileges, and any guaranteed rate of return.

(f) **CORPORATE STOCKS.** The covered pension plan may invest funds in stocks or convertible issues of any corporation organized under the laws of the United States or the states thereof, the Dominion of Canada or its provinces, or any corporation listed on the New York Stock Exchange or the American Stock Exchange, if they conform to the following provisions:

(1) the aggregate value of corporate stock investments, as adjusted for realized profits and losses, must not exceed 85 percent of the market or book value, whichever is less, of a fund, less the aggregate value of investments according to subdivision 6;

(2) investments must not exceed five percent of the total outstanding shares of any one corporation.

(g) **OTHER INVESTMENTS.** (1) In addition to the investments authorized in paragraphs (b) to (f), and subject to the provisions in clause (2), the covered pension plan may invest funds in:

(i) venture capital investment businesses through participation in limited partnerships and corporations;

(ii) real estate ownership interests or loans secured by mortgages or deeds of trust through investment in limited partnerships, bank sponsored collective funds, trusts, and insurance company commingled accounts, including separate accounts;

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(iii) regional and mutual funds through bank sponsored collective funds and open-end investment companies registered under the Federal Investment Company Act of 1940;

(iv) resource investments through limited partnerships, private placements, and corporations; and

(v) international securities.

(2) The investments authorized in clause (1) must conform to the following provisions:

(i) the aggregate value of all investments made according to clause (1) may not exceed 35 percent of the market value of the fund for which the covered pension plan is investing;

(ii) there must be at least four unrelated owners of the investment other than the state board for investments made under clause (1), item (i), (ii), (iii), or (iv);

(iii) covered pension plan participation in an investment vehicle is limited to 20 percent thereof for investments made under clause (1), item (i), (ii), (iii), or (iv); and

(iv) covered pension plan participation in a limited partnership does not include a general partnership interest or other interest involving general liability. The covered pension plan may not engage in any activity as a limited partner which creates general liability.

Sec. 91. Minnesota Statutes 1996, section 446A.12, subdivision 5, is amended to read:

Subd. 5. **EXEMPTION.** The notes and bonds of the authority are not subject to section ~~16B.06~~ sections 16C.03, subdivision 4, and 16C.05.

Sec. 92. Minnesota Statutes 1996, section 462A.18, subdivision 2, is amended to read:

Subd. 2. **CONTRACTS AND SECURITY.** Notwithstanding the provisions of this section, the agency shall have power to contract with the holders of any of its notes or bonds, as to the custody, collection, securing, investment, and payment of any money of the agency, or any money held in trust or otherwise for the payment of notes or bonds, and to carry out such contract. Money held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds and deposits of such money may be secured in the same manner as money of the agency, and all banks and trust companies are authorized to give such security for such deposits. All money so paid to the state treasurer as agent of the agency, from whatever source, are appropriated to the agency. The agency's notes and bonds are not subject to section ~~16B.06~~ sections 16C.03, subdivision 4, and 16C.05.

Sec. 93. Minnesota Statutes 1996, section 471.345, subdivision 8, is amended to read:

Subd. 8. **PROCUREMENT FROM ECONOMICALLY DISADVANTAGED PERSONS.** For purposes of this subdivision, the following terms shall have the meanings herein ascribed to them:

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(a) "Small targeted group business" means businesses designated under section ~~16B.19~~ 16C.16.

(b) "Business entity" means an entity organized for profit, including an individual, partnership, corporation, joint venture, association, or cooperative.

Nothing in this section shall be construed to prohibit any municipality from adopting a resolution, rule, regulation, or ordinance which on an annual basis designates and sets aside for awarding to small targeted group businesses a percentage of the value of its anticipated total procurement of goods and services, including construction, and which uses either a negotiated price or bid contract procedure in the awarding of a procurement contract under a set-aside program as allowed in this subdivision, provided that any award based on a negotiated price shall not exceed by more than five percent the municipality's estimated price for the goods and services if they were purchased on the open market and not under the set-aside program.

Sec. 94. Minnesota Statutes 1996, section 473.142, is amended to read:

473.142 SMALL BUSINESSES.

(a) The metropolitan council and agencies specified in section 473.143, subdivision 1, may award up to a six percent preference in the amount bid for specified goods or services to small targeted group businesses designated under section ~~16B.19~~ 16C.16.

(b) The council and each agency specified in section 473.143, subdivision 1, may designate a purchase of goods or services for award only to small targeted group businesses designated under section ~~16B.19~~ 16C.16 if the council or agency determines that at least three small targeted group businesses are likely to bid.

(c) The council and each agency specified in section 473.143, subdivision 1, as a condition of awarding a construction contract or approving a contract for consultant, professional, or technical services, may set goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses designated under section ~~16B.19~~ 16C.16. The council or agency must establish a procedure for granting waivers from the subcontracting requirement when qualified small targeted group businesses are not reasonably available. The council or agency may establish financial incentives for prime contractors who exceed the goals for use of subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph. The subcontracting requirements of this paragraph do not apply to prime contractors who are small targeted group businesses. At least 75 percent of the value of the subcontracts awarded to small targeted group businesses under this paragraph must be performed by the business to which the subcontract is awarded or by another small targeted group business.

(d) The council and each agency listed in section 473.143, subdivision 1, are encouraged to purchase from small targeted group businesses designated under section ~~16B.19~~ 16C.16 when making purchases that are not subject to competitive bidding procedures.

(e) The council and each agency may adopt rules to implement this section.

(f) Each council or agency contract must require the prime contractor to pay any subcontractor within ten days of the prime contractor's receipt of payment from the council or agency for undisputed services provided by the subcontractor. The contract must require the prime contractor to pay interest of 1-1/2 percent per month or any part of a

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month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney fees, incurred in bringing the action.

(g) This section does not apply to procurement financed in whole or in part with federal funds if the procurement is subject to federal disadvantaged, minority, or women business enterprise regulations. The council and each agency shall report to the commissioner of administration on compliance with this section. The information must be reported at the time and in the manner requested by the commissioner.

Sec. 95. Minnesota Statutes 1996, section 473.556, subdivision 14, is amended to read:

Subd. 14. **SMALL BUSINESS CONTRACTS.** In exercising its powers to contract for the purchase of services, materials, supplies, and equipment, pursuant to subdivisions 5, 7, 8 and 10, the commission shall designate and set aside each fiscal year for awarding to small businesses approximately ten percent of the value of anticipated contracts and subcontracts of that kind for that year, in the manner required of the commissioner of administration for state procurement contracts pursuant to sections ~~16B.19 to 16B.22~~ 16C.16 to 16C.19. The commission shall follow the rules promulgated by the commissioner of administration pursuant to section ~~16B.22~~ 16C.19, and shall submit reports of the kinds required of the commissioners of administration and economic development by section ~~16B.21~~ 16C.18.

Sec. 96. Minnesota Statutes 1996, section 480.09, subdivision 1, is amended to read:

Subdivision 1. The state library shall be maintained in the capitol and shall be under the supervision of the justices of the supreme court. Notwithstanding chapter ~~16B~~ 16C or any other act inconsistent herewith or acts amendatory thereof or supplementary thereto, they shall direct the purchases of books, pamphlets, and documents therefor and the sales and exchanges therefrom upon such terms and conditions as they may deem just and proper. They may authorize the transfer of books and documents to the University of Minnesota or any department thereof, or to any state agency. They shall adopt rules for the government of the library and the management of its affairs, and prescribe penalties for the violation thereof.

Sec. 97. Minnesota Statutes 1996, section 626.90, subdivision 2, is amended to read:

Subd. 2. **LAW ENFORCEMENT AGENCY.** (a) The band has the powers of a law enforcement agency, as defined in section 626.84, subdivision 1, paragraph (h), if all of the requirements of clauses (1) to (4) are met:

(1) the band agrees to be subject to liability for its torts and those of its officers, employees, and agents acting within the scope of their employment or duties arising out of a law enforcement agency function conferred by this section, to the same extent as a municipality under chapter 466, and the band further agrees, notwithstanding section ~~16B.06~~ 16C.05, subdivision 6 7, to waive its sovereign immunity for purposes of claims of this liability;

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(2) the band files with the board of peace officer standards and training a bond or certificate of insurance for liability coverage for the maximum amounts set forth in section 466.04;

(3) the band files with the board of peace officer standards and training a certificate of insurance for liability of its law enforcement officers, employees, and agents for lawsuits under the United States Constitution; and

(4) the band agrees to be subject to section 13.82 and any other laws of the state relating to data practices of law enforcement agencies.

(b) The band shall enter into mutual aid/cooperative agreements with the Mille Lacs county sheriff under section 471.59 to define and regulate the provision of law enforcement services under this section. The agreements must define the trust property involved in the joint powers agreement.

(c) The band shall have concurrent jurisdictional authority under this section with the Mille Lacs county sheriff's department only if the requirements of paragraph (a) are met and under the following circumstances:

(1) over all persons in the geographical boundaries of the property held by the United States in trust for the Mille Lacs band or the Minnesota Chippewa tribe;

(2) over all Minnesota Chippewa tribal members within the boundaries of the Treaty of February 22, 1855, 10 Stat. 1165, in Mille Lacs county, Minnesota; and

(3) concurrent jurisdiction over any person who commits or attempts to commit a crime in the presence of an appointed band peace officer within the boundaries of the Treaty of February 22, 1855, 10 Stat. 1165, in Mille Lacs county, Minnesota.

Sec. 98. Minnesota Statutes 1997 Supplement, section 626.91, subdivision 2, is amended to read:

Subd. 2. **LAW ENFORCEMENT AGENCY.** (a) The community has the powers of a law enforcement agency, as defined in section 626.84, subdivision 1, paragraph (h), if all of the requirements of clauses (1) to (4) are met:

(1) the community agrees to be subject to liability for its torts and those of its officers, employees, and agents acting within the scope of their employment or duties arising out of the law enforcement agency powers conferred by this section to the same extent as a municipality under chapter 466, and the community further agrees, notwithstanding section ~~46B.06~~ 16C.05, subdivision ~~6~~ 7, to waive its sovereign immunity with respect to claims arising from this liability;

(2) the community files with the board of peace officer standards and training a bond or certificate of insurance for liability coverage for the maximum amounts set forth in section 466.04;

(3) the community files with the board of peace officer standards and training a certificate of insurance for liability of its law enforcement officers, employees, and agents for lawsuits under the United States Constitution; and

(4) the community agrees to be subject to section 13.82 and any other laws of the state relating to data practices of law enforcement agencies.

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(b) The community shall enter into an agreement under section 471.59 with the Redwood county sheriff to define and regulate the provision of law enforcement services under this section and to provide for mutual aid and cooperation. The agreement must identify and describe the trust property involved in the agreement. For purposes of entering into this agreement, the community shall be considered a "governmental unit" as that term is defined in section 471.59, subdivision 1.

Sec. 99. EFFECTIVE DATE.

This article is effective July 1, 1998, except that it does not apply to any part of the procurement process that results from a solicitation dated before July 1, 1998.

Presented to the governor April 10, 1998

Signed by the governor April 20, 1998, 11:22 a.m.

CHAPTER 387—S.F.No. 161

An act relating to state government; proposing an amendment to the Minnesota Constitution, article V, sections 1, 3, and 4; article VIII, section 2; article XI, sections 7 and 8; abolishing the office of state treasurer; repealing the powers, responsibilities, and duties of the state treasurer; requiring a study of the issue of transferring the powers, duties, and responsibilities of the state treasurer; amending Minnesota Statutes 1996, sections 9.011, subdivision 1; and 11A.03.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

**CONSTITUTIONAL AMENDMENT; STATE
TREASURER'S OFFICE ABOLISHED**

Section 1. CONSTITUTIONAL AMENDMENT.

An amendment to the Minnesota Constitution is proposed to the people. If the amendment is adopted, article V, section 1, will read:

Section 1. The executive department consists of a governor, lieutenant governor, secretary of state, auditor, ~~treasurer~~ and attorney general, who shall be chosen by the electors of the state. The governor and lieutenant governor shall be chosen jointly by a single vote applying to both offices in a manner prescribed by law.

Article V, section 3, will read:

Sec. 3. The governor shall communicate by message to each session of the legislature information touching the state and country. He is commander-in-chief of the military and naval forces and may call them out to execute the laws, suppress insurrection and repel invasion. He may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to his duties. With the advice and con-

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