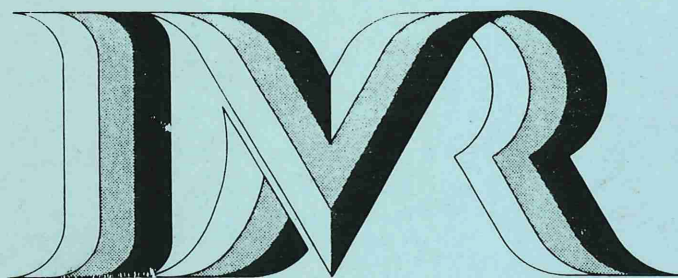


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A  
REPORT to the LEGISLATURE  
on  
Implementation: Session Laws 1984  
Chapter 627  
Long-term Sheltered Employment  
March 1, 1985

# MINNESOTA DEPARTMENT OF ECONOMIC SECURITY



DIVISION OF VOCATIONAL REHABILITATION

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1985

Pursuant to 1984 Laws, chapter 627

## EXECUTIVE SUMMARY

In 1984 the legislature enacted Laws 1984, Chapter 627 (referenced in this document as "Chapter 627"), which changes the way in which the state will fund and evaluate long-term sheltered workshops. Implementation of the law by the Department of Economic Security will have profound impact on the work related services offered to persons with severe disabilities through Minnesota's network of private, non-profit sheltered workshops.

This report reflects the agency's response to the legislative mandate expressed in Chapter 627, as well as to concerns identified in the program audit of sheltered employment conducted by the Office of the Legislative Auditor. The changes proposed in this report provide for a basic re-direction of the state's sheltered employment program. The elements of that change, as reflected in this report, include:

- enhanced opportunities for movement out of sheltered employment into competitive or other community-based options;
- state funding related to units of service provided rather than cost of programs;
- inclusion of severity of disability as an element in the measurement of program performance;
- recognition of both program effectiveness and program efficiency in the funding method;
- consideration of the effects of economic and geographic factors which influence workshop performance and inclusion of those factors in the funding method.

The Division recognizes that sheltered employment programs in Minnesota are changing, and will continue to change. Because these changes are extensive, the Division has been and will continue to be committed to involving all affected groups, individuals, and organizations in the change process. Over 50 individuals have given freely of their time and talents to assist in developing the elements of the changed long-term sheltered employment program described in this report. Many more persons submitted their comments and suggestions to the Division at regional forums.

The law requires that new rules be developed and in place by July 1, 1985. These new rules are to formalize the evaluation elements listed in the law, and update existing rules for workshop certification and funding. Proposed rules have been developed and printed in the 'State Register' February 18, 1985. A public hearing will be held on March 25 and 26, 1985 at which time a State Hearing examiner will hear testimony on the proposed rules. The rules

as proposed contain extensive definitions of the performance measures which will affect workshop funding. They also update certification procedures for workshops and provide a mechanism for appealing the withdrawal of allocated funds from workshops. The Division was ably assisted in writing these rules by an advisory body representing both workshops and advocate organizations. The Division anticipates meeting the July 1, 1985 deadline in the law.

Chapter 627 specifies elements to be used in evaluating sheltered workshops. Using recommendations from its Task Force on Long-Term Sheltered Employment, facilitated by a consultant in organizational development from the University of Minnesota, the Division developed definitions and performance measures for use in evaluation.

Chapter 627 requires that evaluation of workshops include consideration of economic and geographic factors influencing workshop performance. It also requires consideration of the severity of the disabilities of the persons served by workshops. Therefore, the Division developed a series of measures of economic and geographic factors that affect a sheltered workshop's ability to place persons in competitive employment, and to obtain contracts for work to be performed in the workshop. These measurable factors have been combined into an index which will affect workshop funding.

The Division also developed a measure of the difficulty that severely disabled persons face in obtaining competitive employment. This method for measuring the severity of disability of sheltered workers was developed through field research. A researcher and educator in rehabilitation counseling from Mankato State University assisted in developing the difficulty index. A key component in the difficulty index is a functional assessment instrument authored by University of Minnesota faculty members. This measure of the severity of disability will have an impact on workshops' funding.

The most difficult task in implementing Chapter 627 was the development of new allocation formulas which reflect performance measures. Again, this effort was assisted by a special advisory body and with technical assistance from a consultant from the University of Minnesota, School of Education, with expertise in funding through state agencies. Also, many suggestions were received from many individuals and groups. The Division is recommending that the method described in section IV of this report be used after July 1, 1986, as required by Chapter 627.

For existing workshops, the recommended method divides the state appropriations according to the sub programs: long-term employment, work activity, work component, and community-based employment. Next, an initial allocation would be made to each workshop sub program based on the anticipated number of work and service hours, and the total funding available. This allocation would be modified to account for economic and geographic factors, and the severity of disability of persons served. Finally, incentive funding reflecting performance would be added.

Based on test data from five sheltered workshops, it appears likely that significant changes in allocations will result for some workshops. While the funding method will be put into affect on schedule, the Division is recommending a three year phase-in on funding changes for the most significantly affected facilities to afford adequate time to adjust to the changes.

The changes brought about as a result of this law will have a significant impact on Minnesota's sheltered work program. In future years, where necessary, the Division intends to periodically refine and update the economic and geographic factors, the difficulty index, the performance measures, and the allocation method used to fund the programs. In addition, the Division will continue to develop a management information system that will provide more information on this program. In 1985, the Division's major focus will be on training workshop staff in needed data collection methods, and on refining the measures of economic and geographic factors, the difficulty index and the performance factors.

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March 1, 1985

## I. BACKGROUND

In the 1983-85 biennium, legislation, a legislative study, and a legislative audit reflected public and legislative concern about the long-term sheltered employment program. This interest in the program led to the passage of Chapter 627.

In 1983, public and legislative interest in the long-term sheltered employment program was demonstrated by the passage of a rider to the Health, Welfare, and Corrections appropriations bill (Laws 1983, Chapter 312, Article I, Section 3, Subdivision 5). This rider establishes requirements for sheltered workshops and the Department of Economic Security regarding the personnel practices for long-term sheltered employees. To qualify for state funds the workshops must provide fundamental personnel benefits, grievance procedures that include provisions for binding arbitration, and wages certified in compliance with federal law.

This rider was followed by a legislative study (House Advisory 12), of sheltered work programs in the fall of 1983. This study indicated a need to devote more effort to community placements of the persons with severe disabilities served by workshops, and also more efforts to attend to their need for improved wages and increased opportunities to participate in decisions affecting their employment.

In March of 1984, the Office of the Legislative Auditor, Program Evaluation Division, issued a report on the sheltered employment program that urged more emphasis directed toward community placement, more exploration of innovative programs, and more emphasis on relating evaluated workshop effectiveness to funding.

In the 1984 legislative session, Laws 1984, Chapter 627 was enacted, amending Minnesota Statutes 129A. The law requires changes in the way the state funds and evaluates long-term sheltered workshops. The required changes address the concerns identified in House Advisory 12 and the legislative audit. Implementation of the law by the Division of Vocational Rehabilitation will profoundly affect sheltered employees and long-term sheltered workshops.

A copy of the law, and the original statute that it amended, is included as Appendix A.

Chapter 627 requires the commissioner of the Department of Economic Security to report to the legislature on progress in developing rules and allocation methods for the long-term sheltered employment program.

This report fulfills that requirement. It is divided into sections that reflect the major areas of change in the program. Section II describes the processes followed by the Division; section III describes the progress on revising the rules. Section IV describes the Divisions' consideration of new allocation methods. Section V deals with evaluation of workshop performance. Sections VI and VII deal with methods of measuring the severity of disability of sheltered employees, and economic and geographic factors affecting workshops, respectively. The final section discusses potential impacts and the need for continuing implementation activities.

Additional information on the implementation of Chapter 627 and on the sheltered work program can be obtained by contacting the Department of Economic Security, Division of Vocational Rehabilitation.

## II. IMPLEMENTATION PROCESS

Activity to implement the provisions of Chapter 627 has involved many persons from a variety of organizations and fields of expertise. Since the Division's implementation plans called for analysis of all aspects of the operation of the long-term sheltered employment programs, it was beneficial to involve persons with pertinent expertise or knowledge about the programs. This combined effort made it possible to carry out the requirements of Chapter 627 in the most complete and comprehensive manner.

Early in the process, the Division established the Task Force on Long-Term Sheltered Employment, to make recommendations concerning the mission and structure of the program. For this important process, a concerted effort was made to include representatives from all groups that have a "stake" in the program. Membership consisted of representatives from advocacy groups, long-term sheltered workshops, counties, unions, business, education and state agencies. A consultant from the University of Minnesota with expertise in organizational development was chosen to facilitate the work of the task force. (See Appendix B.)

The task force developed a new mission statement for the long-term sheltered employment program and developed recommendations for implementing the performance evaluation and funding method provisions of Chapter 627. Recommendations of the task force were arrived at by consensus through intensive subcommittee work and are consistent with the new mission statement. Those recommendations pertaining to performance measures were adopted by the Division and written into the proposed rules.

The task force recommendations on funding methods required further development and testing of proposed alternatives by the Division. Consequently, a Funding Methods Advisory Committee was convened including a consultant from the University of Minnesota who has experience with funding through state agencies. (See Appendix B.) Committee members worked with Division staff on this critical activity.

As required by Chapter 627 workshop evaluation must take into account the disability levels of sheltered employees and the economic and geographic environment of the workshop. A method for taking economic and geographic factors into account has been developed by a research analysis specialist from the Department of Economic Security, with input from groups and individuals affected by the program.

The Task Force on long-term sheltered employment recommended developing an appropriate standardized instrument to measure the difficulty sheltered employees may encounter in obtaining or retaining employment. To carry out

this work an Advisory Committee on the Difficulty Index, consisting of representative stakeholders, was convened under the direction of an expert in rehabilitation counseling from Mankato State University. (See Appendix B.) Additionally, a researcher from the University of Minnesota who has developed similar measures served as consultant. Extensive research and testing have been done to develop this factor for evaluating workshops.

The Division incorporated all factors that will affect funding of long-term sheltered employment programs as a result of Chapter 627 into recommended funding methods.

The proposed rules to implement Chapter 627 have also resulted from an intensive process involving interested individuals from outside the Division. A Rules Advisory Committee composed of volunteers from the Task Force on Long-Term Sheltered Employment, provided input about certification and funding of workshops. During five meetings with the Division to react to rule drafts, suggestions by committee members precipitated many revisions.

The Division held regional update meetings in November 1984 and January 1985 to seek input on the proposed rules from a broad constituency of people concerned about the program. The individuals notified of these meetings were also the recipients of several mailings from the Division containing updated material on implementation activity and the rules. All persons were encouraged to communicate with the Division regarding their concerns.

While activity with stakeholder groups has focused on development of rules, performance measures for evaluations, and funding methods, the Division has undertaken an evaluation of each program's performance for the year 1984. For this evaluation, existing data was used, although it does not reflect all the new definitions and methods that will be used after the new rules are in effect. This evaluation was done to obtain an approximation of workshops' current standing with regard to evaluation factors.

To keep the Task Force on Long-Term Sheltered Employment informed of rulemaking progress and implementation activities, the Division held an update meeting on December 4, 1984. A second update meeting will be held on March 11, 1985.

### III. RULES DEVELOPMENT

The proposed rules relating to certification and funding of programs offered by long-term sheltered workshops have been published in the February 18, 1985 State Register, at 9 S.R. 1846, pages 1946 through 1858. The public hearing on the proposed rules implementing Chapter 627, is scheduled for March 25, 1985. If the proposed rules are adopted they will be cited as parts 3300.1950 through 3300.3050 in Minnesota Rules. Copies of the proposed rules and the Statement of Need and Reasonableness are available from the Division of Vocational Rehabilitation on request.

The proposed rules reflect the new mission of the program, "to maximize the vocational potential of severely disabled persons through appropriate paid work in the most enabling environment". The proposed rules define the term "extended employment programs" to encompass the four types of employment programs that may be provided by long-term sheltered workshops. The proposed rules define the term "competitive employment" to mean nonsubsidized vocational outcomes, paying at least the applicable minimum wage, in normalized work settings.

The proposed rules address both certification requirements and funding policies and procedures for extended employment programs operated by long-term sheltered workshops. An extended employment program must be certified before the program may receive state funding. The level of funding for a certified program is determined, in part, by an evaluation of its effectiveness.

Certification requirements in parts 3300. 2150 and .2250 in the rules are not increased above current levels. For example, the rules list some of the existing regulations and statutes which apply to long-term sheltered workshops and the programs they offer; the rules do not make substantive additions in these areas. To be certified, an extended employment program must be operated by a corporate entity, i.e., a long-term sheltered workshop. Consequently, a certificate for a program or programs is issued to a specific long-term sheltered workshop or, in the case of work component programs, the entity responsible for payment of wages to program participants.

Funding policies and procedures specify that each program operated by a long-term sheltered workshop is individually funded and evaluated for effectiveness. The evaluation factors affecting the level of state funding are derived from those enunciated in Chapter 627. The evaluation factors are contained in part 3300.2350 of the rules. The commissioner is given discretion to apply specific evaluation factors to the funding of each extended employment program and to adjust the level of state funding for each program by weighting the evaluation factors.

The definitions contained in part 3300.2050 relate principally to the funding policies and procedures under the rules. It was necessary to define the terms used in the evaluation factors to make evaluation as precise as possible. Many of the definitions are expressed as mathematical formulas so that evaluation may be readily quantifiable.

The rules provide, at part 3300.2750, subpart 2, that a withdrawal of allocated state funds may be appealed. Informal and formal procedures are available to appeal the withdrawal of funds.

The rules attempt to reward extended employment programs which serve employees with the most severe disabilities. Higher levels of funding may result when programs attain greater operating effectiveness. Long-term sheltered workshops have maximum flexibility in choosing which extended employment programs to offer.

The rules emphasize the placement of persons with severe disabilities in competitive and community-based employment, when such placement is appropriate. Programs are encouraged to provide the most enabling work environments for sheltered employees. The rules reflect the new definition of sheltered employees contained in Chapter 627.

The following dates are important for the implementation of the proposed rules:

February 18, 1985	Proposed rules published in State Register.
February 28, 1985	Documents including Statement of Need and Reasonableness submitted to the Administrative Law Judge who will conduct the hearing
March 1, 1985	Report to legislature on status of rulemaking due
March 20, 1985	End of 30 day comment period on the published rules
March 25, 1985	Hearing date
April 1, 1985 through April 5, 1985	Written material added to the hearing record
April 16, 1985	Hearing record closed
May 17, 1985	Hearing report due <u>from</u> Administrative Law Judge

May 20, 1985 through May 24, 1985	Hearing report made available to the public
May 24, 1985	DES adopts the rules
May 27, 1985	Rules delivered to the Revisor's Office for final approval
June 3, 1985	Secretary of State files rules
June 5, 1985	Revisor's Office prepares Notice of Adoption
June 10, 1985	Rules and Notice of Adoption delivered to the State Register for publication
June 24, 1985	Rules and Notice of Adoption published in the State Register
July 1, 1985	Rules in effect

At an update meeting on December 4, 1984, the Task Force on Long-Term Sheltered Employment recommended that the Division request emergency rulemaking authority. The Task Force's recommendation concerned an emergency rule to govern allocation methods, economic and geographic factors affecting workshops, and the disability levels of sheltered employees.

The adoption of an emergency rule would provide a degree of certainty to interested parties in Fiscal Year 1986; they would know what to expect from the emergency rules and could plan accordingly. However, the Division has determined that it is not necessary to request emergency rulemaking authority for rules on allocation methods. Chapter 627 requires that new funding methods must be in effect on July 1, 1986, and regular rulemaking procedures could be used to develop rules on funding before that deadline.

In addition, the Division has determined that an emergency rule on allocation methods is not appropriate at this time. The Division anticipates that it may be necessary to refine the proposed allocation method on the basis of actual experience with the method's effect on sheltered employees and long-term sheltered workshops.

The Division has similar concerns about measurements of geographic and economic factors, as developed at the present time. Without actual experience in using these measurements the Division cannot rely on their predictive value. Therefore, a state rule on these factors is not appropriate at the present time. If needed, a permanent rule effective for Fiscal Year 1987 can be developed, based on experience in Fiscal Year 1986.

#### IV. FUNDING METHODS

Chapter 627 states, "...the commissioner shall study and recommend to the legislature by March 1, 1985, new allocation formulas which take into consideration effectiveness of the workshops. In its recommendation, the commissioner shall calculate the fiscal impact of the various formulas on each workshop and the extent to which a workshop can utilize new allocation formulas..."

In meeting this charge, the Department received input and advice from the funding subcommittee of the Task Force on Long-Term Sheltered Employment, the Office of the Legislative Auditor, and a Funding Methods Advisory Committee. (See Appendix B for membership lists.) The Division also hired a consultant to work with the advisory committee who is expert in public funding methods. The consultant is a professor in the University of Minnesota Department of Educational Administration.

#### Alternatives

The Division received and carefully considered a number of approaches to re-developing funding methods for sheltered workshops. These suggested methods had the following features:

- receiving individualized workshop budget proposals followed by a DVR allocation, evaluation and technical assistance. Continued funding would be contingent upon meeting goals.
- relating funding criteria to fixed and variable workshop budget items;
- providing workshops with a foundation rate which would be adjusted for performance, with an emergency relief clause;
- establishing a separate fund for innovative programming;
- establishing a range of "acceptable" performance on all standards, then altering the foundation rate only for those workshops who perform outside this range;
- purchasing extended employment services through DVR counselors on a case-by-case basis;
- finally, the Division considered a suggestion that we establish the "base rate" used in the method being proposed by calculating each workshop's proportion of the total net program costs.

The funding method recommended in this report represents a synthesis of components of the many models suggested and discussed in advisory committees and in work group settings.

### Considerations

In the process of developing new funding methods, we have kept certain fundamental considerations in mind:

- sheltered workshops are, and will continue to be, private, non-profit corporations governed by community boards of directors who must be responsive to a variety of community needs;
- sheltered workshops obtain 75% of their funding from sources other than state funding, though this ratio varies between workshops;
- the funding method has to be relatively easy to comprehend, explain and administer;
- the method of funding must improve opportunities for persons with severe disabilities to reach their vocational potential;
- the funding method should enhance the benefits the state receives for the money invested.

The recommended funding method should not be viewed as the final product, but rather as a beginning to what should be a vital, developing funding approach. Any future changes will be made with the active participation of all stakeholders.

### Proposed Funding Method

This method will be applied in turn to the four extended employment subprograms: long-term employment, work activity, work component, and community-based employment. (See Chapter III for definitions.) The Division recommends a funding method which begins with a uniform base rate which is subsequently adjusted for the factors specified in the law. This model is consistent with suggestions in the report of the Office of the Legislative Auditor, Program Evaluation Division. The uniform base rate for each

subprogram would be based upon the statewide cost of that subprogram (as a proportion of all programs), multiplied by available state dollars, and divided by the number of participants in the program across the state. This base rate would then be adjusted for economic and geographic factors, difficulty, and performance factors. The approach would include the following steps:

1. determine the proportion of total state funds which should be used for each subprogram (across all workshops);

$$\frac{\text{Sum of subprogram cost}}{\text{all program costs}} \times \text{state dollars} = \text{dollars available for subprogram}$$

2. establish the uniform base rate for each full time equivalent individual (FTE) in the subprogram (statewide). (Note that one FTE is defined as employment and program activity equivalent to 30 hours per week for a full year.)

$$\frac{(\text{All}) \text{ subprogram dollars}}{\text{subprogram FTE total}} = \text{subprogram base rate}$$

3. adjust each facility's base rate for economic and geographic factors;

$$\text{Base rate} \times \text{economic and geographic index} = \text{redistributed base rate}$$

4. adjust each facility's base rate for the difficulty level of its participants (difficulty index).

$$\text{Base rate} \times \text{difficulty adjustment} = \text{redistributed base rate}$$

5. adjust each facility's funding for performance factors;

$$\text{Redistributed base rate} \times \text{performance factors} = \text{final facility sub-program allocation}$$

Allocation for workshops will be the sum of their subprogram allocations. When new workshops are accepted for funding, the Division will establish base rates for support for their first year of operation, based upon the prevailing statewide averages. These will then be modified in succeeding years as for other workshops.

#### Weightings of Adjustment Factors

The Division proposes that the weighting of the adjustment factors be expressed and applied in terms of percentages of the base rate (in dollars)

which will be re-allocated according to the workshop's relative standing on each factor. The suggested weightings for the factors are as follows:

Input Factors

Difficulty	10%
Economic and geographic	10%

Performance Factors

Efficiency	3%
Wages and Benefits	5%
Placement Factors	7%

The weightings suggested above resulted from consideration of the potential effects of various weighting patterns. For example, it seemed reasonable that performance factors should not greatly outweigh difficulty or workshops would be rewarded for serving the less severely disabled.

Field Test

The Division collected information from five Minnesota workshops for the purpose of testing the proposed funding method. The five workshops selected for this simulation were the same as those used to develop the "Difficulty Index" referred to in Chapter VI. Appropriate data from all workshops was not available. This will produce some impressions of the mechanics and the primary effects of the proposed funding method. Nevertheless, since some of the data is based on sampling rather than complete statewide results, the simulation which will be presented below must be considered as approximate rather than precise.

The field test included five workshops geographically distributed throughout the state (North, South, Central, Metropolitan). These workshops range in program size from 61 sheltered employees to 290, and included rural and urban workshops. We anticipate that a complete data base will be available before the new funding method is scheduled to take effect.

Funding Proposal - Simulation

This simulation is presented in four stages, with tables portraying the effects of transition to base rate funding; the effects of economic and geographic factors and difficulty adjustments; the effects of performance factors; and the net effects of the new funding method. This simulation deals only with the "long-term employment" subprogram. This subprogram is the largest, utilizing about two-thirds of available state dollars.

Note: Data in this table must be interpreted with caution. All data elements were not available for all items and some "proxy" data was used. The allocations noted will undoubtedly change when full data is available. Nonetheless, the information in the table is illustrative of the impact the proposed funding methodology will have on workshops.

Table 1. Transition to Base Rate Funding

	Workshops				
	1	2	3	4	5
A. Subprogram base rate per participant	\$ 2,127	\$ 2,127	\$ 2,127	\$ 2,127	\$ 2,127
B. Participants (FTE)	225.10	113.56	290.86	61.33	131.25
C. New base allocation (A x B)	\$478,788	\$241,542	\$618,659	\$130,449	\$279,169
D. Allocation by former method (1984)	\$421,399	\$455,456	\$565,636	\$149,872	\$312,432
E. Effect of base rate method	+ 57,389	-213,914	53,023	- 19,423	- 33,263

Table 1 makes it evident that rather profound changes will result from this first step - the transition from budget-based funding to base rate funding. The total dollars for the long-term employment subprogram are divided by the total number of participants statewide to produce the base rate per participant in line "A" in Table 1. The new base allocation for each workshop (line "C") is established by multiplying the base rate in line "A" times the number of participants in each workshop's long-term work program (line "B"). Comparing the new allocation in line "C" with the allocation using the former method in line "D" produces the effects in line "E". Subsequent adjustments for economic and geographic factors and difficulty index will not completely eliminate these changes.

Note: The Division is recommending that reductions in allocations occurring as a result of this part of the new method be limited to 30% in FY 1987 and 75% in FY 1988. See Phase in Timetable on page 8.

Table 2. Adjustment for Economic and Geographic Factors and Difficulty Index

	Workshops				
	1	2	3	4	5
A. Base allocation (same as Table 1, line "C")	\$478,788	\$241,542	\$618,659	\$130,449	\$279,169
B. Adjustment for economic and geographic factors	+ 16,016	+ 38,042	+ 44,073	+ 17,656	- 46,133
C. Adjustment for difficulty index	- 7,485	- 66,287	- 11,625	- 2,039	+ 87,440
D. Adjusted allocation per participant (FTE) (A+B+C) / FTE	\$ 2,165	\$ 1,878	\$ 2,239	\$ 2,382	\$ 2,442

Table 2 displays the effects of adjustment for economic, geographic and difficulty factors using approximations of the adjustments to be applied in the new method. Clearly, the workshops differ considerably on these measures. The cumulative effect of these adjustments produces per participant base rates which range from \$1,878 to \$2,442 (line"D").

Table 3. Adjustment for Performance Factors

	Workshops				
	1	2	3	4	5
A. Adjustment for "efficiency"	+ 6,902	- 25,708	+ 6,392	- 2,333	- 3,995
B. Adjustment for wages and benefits	+ 13,395	+ 4,486	- 31,735	+ 4,175	- 817
C. Adjustment for placement factors	- 28,616	- 21,710	- 19,453	- 10,594	+ 7,817
D. Sum of performance factor adjustments	- 8,319	- 42,932	- 44,796	- 8,752	+ 3,005
E. Adjusted allocation per full time participant	\$ 2,128	\$ 1,500	\$ 2,085	\$ 2,239	\$ 2,465

The performance factors produced more negative than positive effects on the five workshops. That occurred because when compared with all other workshops on these factors, four of these workshops were below average. These changes illustrate the importance of a phase-in timetable as indicated later.

Table 4 is a summary of the effects of the new funding method on the five workshops with an illustration of the effect of the 30% limit on change.

Table 4. Summary of Effect of Proposed Allocation Method

	Workshops				
	1	2	3	4	5
A. Subprogram base rate	\$ 2,127	\$ 2,127	\$ 2,127	\$ 2,127	\$ 2,127
B. Old method support per participant (FTE)	\$ 1,872	\$ 4,011	\$ 1,944	\$ 2,444	\$ 2,380
C. Total effect of change to uniform funding base (line A - B)	+255	-1,884	+183	-317	-253
D. Effects of Economic and geographic and difficulty adjustments	+38	-249	+112	+255	+315
E. Effects of performance factor adjustments	-37	-378	-11	-143	+23
F. Net change per participant (FTE) (old versus new method) (line C+D+E = F)	+256	-2,511	+284	-205	+85
G. Net change in allocation (old versus new method) (line F x FTE)	+57,626	-285,149	+82,604	+26,311	+11,156
H. First year changes with 30% limitation applied to line C	+17,558	-135,364	+45,374	+1,043	+34,388

Table 4 illustrates again the profound effects brought about by the shift from former methods to base rate funding. For workshop #2, the 30%-75% phase-in is essential to prepare for the loss of state funds. The other four workshops in this simulation benefit from the new method.

Phase-in Timetable

In order to minimize the financial hardship that could result from a changed allocation method, the Division will follow the timetable below:

Fiscal Year 1986 (October 1, 1985 - September 30, 1986)

Changes in the allocation method will be limited to funding increases for community-based employment programs and re-allocating 5% of the funds available for long-term employment and in-house work activity according to the economic and geographic factors listed in Section VII.

Fiscal Year 1987 (October 1, 1986 - September 30, 1987)

Allocations will be made based on the proposed method. Reductions in workshop allocations caused by switching from the former method to base rate funding, will be limited to 30%. Adjustments in the base rate relating to difficulty, economic and geographic factors, and performance measures will be made, as described.

Fiscal Year 1988 (October 1, 1987 - September 30, 1988)

Allocations will be made based on the proposed method. Reductions in workshop allocations caused by switching from the former method to base rate funding, will be limited to 75%. Adjustments in the base rate relating to difficulty, economic and geographic factors, and performance measures will be made, as described.

Fiscal Year 1989 (October 1, 1988 - September 30, 1989)

All method changes fully implemented.

## V. PERFORMANCE EVALUATION

Chapter 627 requires the Division to implement a performance-based evaluation system for those long-term sheltered workshops which receive state funding. It further specifies evaluation criteria to be included in such a system and states that funding methods must take into consideration the evaluated effectiveness of the workshops. Therefore, the Division has developed procedures to measure the effectiveness of workshops, based on those evaluation criteria cited in the legislation. The use of evaluation criteria in allocating funds to programs operated by workshops is addressed in Section IV.

As a first effort in developing procedures for workshop evaluation, the Division has evaluated the performance of sheltered workshops for Fiscal Year 1984. A separate report, Evaluation of Long-Term Sheltered Workshops for FY 1984 contains the data from that evaluation, along with a discussion of the uses and limitations of the data. The report also indicates work remaining to be done in the development of data collection and performance evaluation measures. The data contained in that report is descriptive in nature, presenting a "snapshot" or "point in time" depiction of workshop achievements in Fiscal Year 1984. This report will be available shortly from the Division.

It is difficult to use any one of these data elements by itself to evaluate the overall performance of a particular workshop, since there are many factors which affect workshop results in any given area of performance. Also, it is thus far not been possible to determine how much any evaluation element ought to be weighted vis-a-vis any other in the development of funding formulas.

As a result of this evaluation for 1984, the Division has made decisions concerning the system for evaluating long-term sheltered workshops. More work needs to be done in the area of developing statistical correlations between those categories of "input" (i.e., level of disability, economic and geographic factors, etc.) and various types of "output," (e.g., rates of retention in competitive placement, rates of placement in community-based employment, participant wage levels, and increases in individual participant productivity). When further data collection is completed using the newly developed definitions of evaluation factors contained in the proposed rules, objective standards of performance can be refined through regression techniques which will relate "input" and "output" factors.

The Division has determined that the following criteria required by Chapter 627 cannot be measured on a numerical scale:

"Opportunities for sheltered employees to participate in decisions affecting their employment;"

"Workshop responsiveness to sheltered employees' grievances;"

"Increases in individual sheltered employee productivity;" and

"Implementing innovative ways to increase placement and retention of sheltered employees in competitive employment, or in sheltered positions with competitive employers, or innovative ways that increase sheltered employee wages"

These factors will not affect funding as described in Section IV. The Division will monitor the workshops' efforts at achieving optimal results in these areas and will provide technical assistance when necessary.

In addition to the criteria specified in Chapter 627, the Division has proposed rules for evaluating workshops' performance utilizing criteria developed by the Subcommittee on Performance Measures of the Task Force on Long-Term Sheltered Employment:

- Rate of Retention in Competitive Employment
- Rate of Placement in Community-Based Employment

Both of these are measurable, and can be calculated from data which the workshops are able to collect. Data on these criteria was not available for Fiscal Year 1984, but will be collected during Fiscal Year 1985.

The evaluation system that will be implemented July 1, 1985 for long-term sheltered workshops will be further refined in upcoming years based on actual experience with its use.

## VI. SEVERITY OF DISABILITY FACTORS

A Difficulty Index (DI) has been developed to serve as a basis for evaluating sheltered workshops relative to the factor referred to in Chapter 627 as "disability levels of the sheltered employees." The measure is referred to as a difficulty index because employability factors other than disability are included in the index. The index has been validated through research in Minnesota sheltered workshops. While the DI includes measurement of many sheltered employee characteristics, most of the assessment will be accomplished through the use of a standardized, thirty item functional assessment inventory.

Upon recommendation of the Performance Measures subcommittee of the Task Force on Long-Term Sheltered Employment, the Division determined that a difficulty index could not be defined arbitrarily, but would require developmental research. The Division assigned the task of directing this project to a rehabilitation educator and researcher from the Mankato State University Rehabilitation Counseling Education Program.

This project has been guided by an Advisory Committee on the Difficulty Index which includes representatives of consumer groups and sheltered workshops. (See Appendix B.) The staff and advisory committee have understood from the outset that real "difficulty is, like real "intelligence" not something that can be measured directly, but only by proxy. The proxy often used for intelligence is performance on a set of standardized tasks (intelligence tests), performance on which has been shown to have some useful relationship to later performance in school or in work. The committee determined that a DI could best be constructed from those characteristics of sheltered employees which have been shown in previous research to have a useful predictive relationship with employability and productivity. It was also agreed that an attempt should be made to cross-validate these DI measures using a sample of the population to which the index would be applied - employees in Minnesota long-term sheltered employment programs.

### Difficulty Index Development Process

The first step was to develop criteria for the DI. The criteria applied in the search for useful measures have included the following:

Specificity-relevance. DI components must have a demonstrated relationship with performance factors.

Simplicity. The measures and the DI formula should be readily understood or easily learned by the people who must use them.

Availability. Measures should be used which accommodate to or utilize data which is normally available at the time people enter sheltered employment.

Flexibility. The DI should not force unnecessary uniformity in evaluating programming in the sheltered workshop.

Economy. DI measures should be selected which have a sound standardization base so that limited development time lines can be met without extraordinary expense.

Impartiality-objectivity. The measures should be reasonably free from bias by the data collector and/or conducive to collection or audit by third parties.

Clearly, these criteria are sometimes contradictory, requiring compromise in the selection of "best" measures and methodology.

### Literature Review

The next step was an extensive review of research literature in the areas of rehabilitation, speech evaluation, and developmental disabilities to identify useful predictors of rehabilitation outcome, and to search for useful methods for constructing and applying a difficulty index in practice. This review provided a rich basis for selecting the variables which should be covered by the index (those which had proven useful in previous studies). This research also led to the conclusion that a functional assessment instrument would be the best tool for achieving non-intrusive but comprehensive coverage of most of the predictor variables. Functional assessment rating scales had already been constructed which permit combining clinical judgment with objective data (from various sources) in predicting employability.

The subsequent national literature review on functional assessment systems and adaptive behavior scales led to the selection of the Functional Assessment Inventory (FAI), authored by N. Crewe, and G. Athelstan, (University of Minnesota), as the most suitable instrument. This instrument has demonstrated reliability and validity for use in predicting vocational rehabilitation outcomes. In addition to the FAI, other indicators were tested, including such factors as disability, age, education, intelligence, and financial disincentives.

## Building the Index

The process for building the DI was similar to that used in similar studies, reported in the literature, which were designed to refine staff performance measurement in rehabilitation agencies. This is, however, the first attempt to assess "difficulty" among sheltered employees for the purpose of workshop performance evaluation.

Five Minnesota sheltered workshops were selected and agreed to participate in the project. Staff members from each workshop were trained in data collection and in FAI rating procedures. A random selection of sheltered workers, work activity participants, and competitively placed (former) sheltered employees from each workshop produced a total sample of 152 persons about whom indicator data and outcome data were collected.

## Data Analysis

Standard statistical analysis procedures make it possible to select the best combination of variables to use in predicting yet another variable (in this case trying various indicators to "predict" wage rate, employment outcome, and productivity rate). This analysis has supported the use of the Functional Assessment Inventory and the factor of financial disincentives as adequate indicators from which to build a DI. When these two indicators were used in combination, none of the other indicators added significant predictive power in multiple regression analysis. (It should be noted that an additional dependent variable is being tested as this document is published.)

The FAI covers many employability factors (30 ratings). That probably explains why its measurement qualities make it unnecessary to add disability, intelligence, and other measures to the DI. This also provides us with a relatively inexpensive and non-intrusive indexing procedure. This DI produced a predictive validity co-efficient of .63 in the retrospective study conducted by the Division. This is considered strong predictive validity and very strong support for the use of these components in the DI.

## Implementation

An average difficulty index of all sheltered employees in each workshop's sheltered employment programs can only be established through a statewide data collection strategy. The DI advisory committee will assist the Division in planning a data collection approach which will maximize the objectivity of the measurement process, while considering cost. This process is likely to require six months to one year to complete. Until it is carried out, the

Division must use the data collected in the five workshops which participated in this study in order to test the financial effect of difficulty index differences between workshops. See Section IV for the use of the DI in allocation methods.

### Summary

The Divisions believes that the DI is a sound, workable procedure for assessing the effect of the levels of disability of sheltered employees on their employability. The Division also recognizes that the index can be improved with continued monitoring and standardization research, and that changing definitions of the most valued outcomes for people with disabilities will require continued review of the make-up of the index.

## VII. ECONOMIC AND GEOGRAPHIC FACTORS

Chapter 627 specifies that evaluation of long-term sheltered workshops must take into account the "geographic location ... of the workshop ... and the economic conditions of the surrounding community." To achieve this end, the Division has developed a measurement of economic conditions which takes into account localized economic factors. This section discusses the data elements of this measurement. See Section IV for the use of economic and geographic factors in allocating funds to workshops.

The Division considered a variety of factors for use in developing the measurement of economic and geographic conditions. The four types of data that were selected are shown in the following table.

<u>TYPE OF DATA</u>	<u>TIME PERIOD FOR DATA</u> <u>(AS OF MARCH 1, '85)</u>	<u>SOURCE</u>
1. Annual Average County Unemployment Rate	1984 Annual Average	Research and Statistical Services Office (RASSO) Minnesota Department of Economic Security
2. Average County Covered Quarterly Wages	Second Quarter 1984	RASSO
3. County Per Capita Income	1981	RASSO
4. Percent of Population Below Poverty Level	1980 Census	Office of the State Demographer

A brief definition and description of each of these four types of data, sources, and the rationale for their incorporation into the measurement of economic and geographic factors, follows.

1. Annual Average County Unemployment Rate. This is the ratio of the estimated number of unemployed workers to the estimated total labor force for any given area. This figure gives a relative indication of the difficulty which a job-seeker would face in finding suitable employment. As a result, the unemployment rate is often used as an economic barometer for a given locality, and is therefore an appropriate measure of economic and geographic conditions.

2. Average County Covered Quarterly Wage This data reflects the average level of wages prevalent in any given area, which is a key indicator of economic conditions. Second Quarter 1984 data was used because this particular part of the year is least likely to be affected by the peaks and valleys of seasonal hirings and layoffs in such industries as construction, tourism, seasonal manufacturing, etc. Second Quarter data best typifies "average" employment and wage conditions for the year as a whole.

In order to use this data in a measurement of economic and geographic conditions, an "average quarterly wage level" for all workers was derived. The total amount of covered wages in a given workshop's service area was divided by the average number of covered workers in all industries in that particular area, to yield an approximate "average quarterly wage level" for all workers. ("Covered wages" and "covered workers" are wages and workers in employment covered by the States' unemployment compensation statutes: approximately 98% of all wage and salary employment.)

3. County Per Capita Income Per Capita Income is calculated by summing all sources of personal income in an area (e.g., wage and salary, agricultural, investment, government transfer payments such as social security, unemployment compensation, welfare benefits, and other categories of personal income) and dividing this figure by the total population of that area. This yields a relative measure of overall prosperity for a locality. The basic premise in using this for workshop evaluation is that workshops in higher per capita income areas can be expected to perform at somewhat higher levels than those in areas where per capita income is lower, most notably in relation to performance criteria such as competitive placement and wages paid to LTSW participants. Therefore, per capita income is appropriately included in the measurement of economic and geographic conditions. In areas characterized by relatively adverse economic conditions need to be given additional "credit" when funding allocation methods are applied.
4. Percent of Population Below Poverty Level. This data shows the percentage of individuals in a particular area whose income is below the official poverty level at a given time. The 1980 data was the most recent available on this particular economic indicator, because such information is collected and calculated from decennial census data. Generally, this information can be considered a measurement of "economic distress" in a given area. (Separate figures for the cities of Minneapolis and St. Paul, as well as the total metropolitan area, were available and were used where appropriate.)

## Derivation of the Economic/Geographic Factors

The measurements of economic and geographic conditions were based on the number of standard deviations of data on each workshop from the mean of the data for all workshops which receive funding from the Division. This standardization of scales was necessary to ensure that the four types of data were incorporated and weighted in a uniform manner, and equal weighting was used when integrating the four types of data into a composite measurement of economic and geographic conditions.

Although equal weighting was used, if future experience and testing shows that certain measurements of the economy of an area may be deemed to have greater impact than others when assessing overall economic conditions, the four data elements may be weighted differently.

From its experience in developing the measurements of economic and geographic conditions, the Division has determined that it is essential to use the most current data available for each workshop's service area. The four data sources were not uniform in terms of time periods covered, and updated figures for each of them are not available at the same time of the year. Thus, when the Division recalculates the measurements on an annual basis, the data used should be that which is the most current available at the time.

Preliminary measurements were generated in October, 1984, which incorporated data elements for the county where each workshop is located. It has since been determined that the measurements will be developed using the data for all counties which comprising the service area for each workshop.

Since the data used in calculating measurements of economic and geographic conditions can be updated on a regular basis, the measurements will take into account changes in the economic conditions prevailing in the service areas of the long-term sheltered workshops.

## VIII. FUTURE PLANS

The future of the long-term sheltered employment program will clearly be affected by the implementation of Chapter 627. Performance-based funding and a strong emphasis on placing persons in community-based or competitive employment will lead the program in new directions. The tools for moving the program in these new directions have been fashioned in this implementation effort. However, these tools and techniques are new and need considerable testing and evaluation.

While it appears that the performance measures developed to date are appropriate, it will be essential to review them periodically to assure that sheltered workers are given every opportunity to develop their full vocational potential.

The newly developed "difficulty index" has given clear indication of being a useful measurement of the effect that the levels of individuals' have on their employability. However, any instrument of this nature must be continuously monitored and corrections made in its construction and use. The Division intends to devote the needed resources to maintain and update the index, and to test it against appropriate criteria. Validity and reliability tests will be run, and a method developed to assure that it is administered fairly and equitably across the state. It has not yet been determined who should administer the index; this will be a high priority issue in 1985.

The measurements of economic and geographic conditions developed by the Division also appear to be valid. They need to be tested and updated if necessary as new information regarding the data elements becomes available.

Most importantly, the recommended allocation method must be carefully monitored, to assure not only that it is doing what it is supposed to do, but also that the application of the new method does not cause extraordinary financial hardship for workshops, resulting in diminished services and work opportunities for the sheltered workers they serve. The use of the new method will require the exercise of careful judgment on the part of the Division. The new method will be evaluated on the basis of actual experience, and, if necessary, the method may be modified. The Division will work with interested groups and individuals in evaluating the allocation method.

One critical area that will be carefully explored is the use of the state's sheltered work funds to reward high performing workshops, versus using funds to improve the performance of lower-performing workshops. Workshops that experience significant loss of state funds may, as a result, be unable to improve their performance. The major criterion the Division will use in making judgments regarding the allocation method is the impact such decisions

will have on sheltered workers and potential sheltered workers. Decisions regarding funding will need to be made with great care to assure that services remain available throughout the state and that workshops' programs are improved, when necessary.

The program's new emphasis on placing sheltered workers into more normalized working environments is widely shared and accepted. However, the Division has identified issues related to this new emphasis that will need to be monitored and addressed in the future. Two of these issues are discussed in the following paragraphs.

- There is some evidence that efforts to place persons with severe disabilities in community-based or competitive employment may be hindered by "disincentives." These disincentives may include the loss of welfare and medical benefits, and the loss of personnel benefits provided by the workshops. Because of these disincentives, individuals do not desire community placements, and their desires need to be considered.
  
- The costs, public and private, of community-based employment are not clearly known at this time. In 1985, the Division will obtain data on costs in order to project costs for community-based employment in the future.

The Division intends to address these, and other issues that arise in redirecting the long-term sheltered employment program, by sharing information and maintaining open communications with advocates, workshop staff, legislators, and other groups and individuals concerned with and affected by the program.

## APPENDIX

A.1. LAWS 1984, CHAPTER 627

A.2. MINNESOTA STATUTES, CHAPTER 129A

B.1. TASK FORCE ON LONG-TERM SHELTERED  
EMPLOYMENT MEMBERSHIP LIST

TASK FORCE ON LONG-TERM SHELTERED  
EMPLOYMENT RESOURCE PERSONS AND  
OTHER COMMITTEE PARTICIPANTS

B.2. FUNDING METHODS ADVISORY COMMITTEE

B.3. ADVISORY COMMITTEE ON DIFFICULTY INDEX

APPENDIX A

A.1. LAWS 1984, CHAPTER 627

A.2. MINNESOTA STATUTES, CHAPTER 129A

## CHAPTER 627 — S.F.No. 1441

*An act relating to the operation of the department of economic security; funding sheltered workshop and work activity programs based on evaluated effectiveness; defining sheltered employee; requiring rulemaking and a report to the legislature; appropriating money; amending Minnesota Statutes 1982, sections 129A.01 and 129A.08.*

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

Section 1. Minnesota Statutes 1982, section 129A.01, is amended to read:

**129A.01 DEFINITIONS.**

For the purposes of this chapter, the following terms shall have the meanings given them:

- (a) "Department" means the department of economic security;
- (b) "Commissioner" means the commissioner of economic security;
- (c) "Vocational rehabilitation services" means those services and goods so defined in the federal Rehabilitation Act of 1973 and section 3, clause (b);
- (d) "Handicapped person" means a person who because of a substantial physical, mental or emotional disability or dysfunction requires special services in order to enjoy the benefits of society;
- (e) "Long-term sheltered workshop" means a facility where any manufacture or handiwork is carried on and which is operated for the primary purpose of providing remunerative employment to those handicapped persons who, as a result of physical or mental disability, are unable to participate in competitive employment. A long-term sheltered workshop shall supply such employment (1) as a step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market, or (2) during such time as employment opportunities for them in the competitive labor market do not exist;
- (f) "Work activity program" means a program which utilizes manufacturing activities and other production work for the primary purpose of providing basic vocational skills development for the handicapped;
- (g) "Sheltered employee" means a handicapped person working for pay while participating in a long-term sheltered workshop program.

Sec. 2. Minnesota Statutes 1982, section 129A.08, is amended to read:

**129A.08 COMMISSIONER'S DUTIES; LONG-TERM SHELTERED EVALUATION AND FUNDING OF WORKSHOPS AND WORK ACTIVITY PROGRAMS.**

Subdivision 1. **GRANTS.** The commissioner may make grants to assist cities, towns, counties, nonprofit corporations, or any combination thereof in the establishment, operation and expansion of long-term sheltered workshops or work activity programs. The commissioner may accept federal grants or aids and shall cooperate with federal agencies in any reasonable manner necessary to qualify for federal grants or aids for long-term sheltered workshops or work activity programs.

Subd. 2. **EVALUATION; STATE FUNDING.** At the beginning of each fiscal year, the commissioner shall allocate available funds to long-term sheltered workshops and work activity programs for disbursement during the fiscal year in accordance with approved plans or budgets. The commissioner shall study and recommend to the legislature by March 1, 1985, new allocation formulas which take into consideration effectiveness of the workshop. In its recommendation the commissioner shall calculate the fiscal impact of the various formulas on each workshop and the extent to which a workshop can utilize new allocation formulas. The commissioner shall develop forms to assist the workshops in collecting data necessary to complete the evaluation. Information needed to conduct the evaluations must be submitted by the workshops along with the annual requests for funding. Failure to submit documentation requested by the commissioner shall result in the withdrawal of all state funding for the workshop.

The commissioner shall from time to time during the fiscal year review the budgets and expenditures of the various workshops and programs ~~and~~. If funds are not needed for the workshop or program to which they were allocated, the commissioner may, after reasonable notice and opportunity for hearing, withdraw such funds as are unencumbered and reallocate them to other workshops or programs. He ~~The commissioner may withdraw funds from any workshop or program which is not being administered in accordance with its approved plan and budget and with relevant department rules unless a modified plan and budget is submitted to and approved by the commissioner, and implemented within a reasonable time.~~

The commissioner shall also withdraw funds from a workshop or program not being administered according to department rules, or not meeting mandatory standards for certification, unless a plan bringing the workshop or program into compliance with the rules and standards is submitted to and approved by the commissioner and implemented within a reasonable time.

Subd. 3. **OPERATING COSTS FUNDED.** The grant may not exceed an amount equal to 75 percent of the normal operating expenses of the long-term sheltered workshop or work activity program. Wages paid ~~clients sheltered employees or long-term workers work activity program participants~~ are to be excluded in determining operating cost. In the event that there are inadequate funds appropriated to meet the foregoing provisions in full, they shall be prorated proportionately.

Subd. 4. **EVALUATION OF WORKSHOPS.** The workshop evaluation must include, but not be limited to, the following considerations:

(a) Wages and benefits paid to sheltered employees and number of hours worked;

(b) Rate of placement in competitive employment;

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(c) Opportunities for sheltered employees to participate in decisions affecting their employment;

(d) Workshop responsiveness to sheltered employees grievances;

(e) Increases in individual sheltered employee productivity;

(f) Implementing innovative ways to increase placement and retention of sheltered employees in competitive employment, or in sheltered positions with competitive employers, or innovative ways that increase sheltered employee wages;

(g) Efficiency of the workshops; and

(h) Types and levels of disability of the sheltered employees and willingness of the workshop to accept and assist persons with serious behavioral, mental, sensory or physical disabilities.

The evaluation must take into account the disability levels of the sheltered employees, the geographic location and size of the workshop and the economic conditions of the surrounding community.

Subd. 4 5. **RULE AUTHORITY.** In addition to the powers already conferred on him by law, the commissioner shall promulgate rules ~~in regard to the following matters on:~~

(a) state certification of all long-term sheltered workshops and work activity programs;

(b) eligibility of community long-term sheltered workshops and work activity programs to receive state grants;

(c) standards for qualification of personnel and quality of professional service and for in-service training and education leave programs for personnel;

(d) eligibility for service so that no person will be denied service on the basis of race, creed or color;

(e) regulatory fees for consultation services; ~~and~~

(f) standards and criteria by which handicapped persons are to be judged eligible for the services;

(g) evaluation criteria for long-term sheltered workshops; and

(h) program evaluation criteria for work activity programs in order to determine the extent to which these programs meet the goals and objectives established in state and federal law relating to work activity programs.

The rules on evaluation criteria for long-term sheltered workshops must be in effect by July 1, 1985. The rules must be used in making allocations for fiscal years beginning after June 30, 1986.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subd. 6. TECHNICAL ASSISTANCE. The commissioner shall provide technical assistance within available resources to workshops and programs based on the need reflected in an evaluation.

**Sec. 3. REPORT TO LEGISLATURE.**

The commissioner shall report to the legislature by March 1, 1985, on the progress in implementing section 2, subdivision 5. The report shall include a draft of the proposed rule and current information on the status of rule development.

**Sec. 4. APPROPRIATION.**

The sum of \$51,000 is appropriated from the general fund to the commissioner of economic security for purposes of this act.

Approved May 2, 1984

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## CHAPTER 129A

### VOCATIONAL REHABILITATION

129A.01	Definitions.	129A.06	Community long-term sheltered workshops and work activity programs.
129A.02	Commissioner; consumer advisory council, staff.	129A.07	Community long-term sheltered workshop boards.
129A.03	Powers and duties.	129A.08	Evaluation and funding of workshops and work activity programs.
129A.04	Disability determinations; privileged information.	129A.09	Expenditure of federal funds.
129A.05	Reports, disclosure.		

#### 129A.01 DEFINITIONS.

For the purposes of this chapter, the following terms shall have the meanings given them:

- (a) "Department" means the department of economic security;
- (b) "Commissioner" means the commissioner of economic security;
- (c) "Vocational rehabilitation services" means those services and goods so defined in the federal Rehabilitation Act of 1973 and section 129A.03, clause (b);
- (d) "Handicapped person" means a person who because of a substantial physical, mental or emotional disability or dysfunction requires special services in order to enjoy the benefits of society;
- (e) "Long-term sheltered workshop" means a facility where any manufacture or handiwork is carried on and which is operated for the primary purpose of providing remunerative employment to those handicapped persons who, as a result of physical or mental disability, are unable to participate in competitive employment. A long-term sheltered workshop shall supply such employment (1) as a step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market, or (2) during such time as employment opportunities for them in the competitive labor market do not exist;
- (f) "Work activity program" means a program which utilizes manufacturing activities and other production work for the primary purpose of providing basic vocational skills development for the handicapped;
- (g) "Sheltered employee" means a handicapped person working for pay while participating in a long-term sheltered workshop program.

**History:** 1976 c 332 s 1; 1977 c 430 s 9; 1984 c 627 s 1

#### 129A.02 COMMISSIONER; CONSUMER ADVISORY COUNCIL, STAFF.

Subdivision 1. [Repealed, 1977 c 430 s 26]

Subd. 2. **Commissioner.** The commissioner is the chief executive officer of the department and is the successor to the powers and duties of the former assistant commissioner of vocational rehabilitation. The commissioner shall be appointed by the governor and serve under the provisions of section 15.06. The commissioner shall be a person having substantial experience in the administration and financing of vocational rehabilitation programs.

Subd. 3. **Consumer advisory council.** To assure that consumer concerns are integral parts of the considerations of the department, the commissioner shall establish and appoint a consumer advisory council on vocational rehabilitation which shall be composed of nine members. No fewer than five members of the council shall be handicapped persons, and there shall be one person appointed to the council to represent each of the following: business, labor, education, medicine and the private rehabilitation industry. The remaining members shall be public members.

Under the direction of the commissioner, the council shall organize itself and elect a chairman and other officers as it deems appropriate. The council shall meet at the call of the chairman or the commissioner as often as necessary. The council shall expire and the terms, compensation and removal of members shall be as provided in section 15.059.

**Subd. 4. Staff.** The commissioner may establish three positions in the unclassified service limited to the deputy commissioner, assistant commissioner or assistant to the commissioner levels. Persons appointed to fill these positions shall serve at the pleasure of the commissioner.

**History:** 1976 c 332 s 2; 1977 c 305 s 22

NOTE: See also Laws 1977, Chapter 430, Sections 9-12.

### 129A.03 POWERS AND DUTIES.

The commissioner shall:

(a) Develop and administer the long-term sheltered workshops and work activity programs and perform the duties as specified in section 129A.08;

(b) Provide vocational rehabilitation services such as: diagnostic and related services incidental to determination of eligibility for services to be provided, including medical diagnosis and vocational diagnosis; vocational counseling, training and instruction, including personal adjustment training; physical restoration, including corrective surgery, therapeutic treatment, hospitalization and prosthetic devices, all of which shall be obtained from appropriate established agencies; transportation; occupational and business licenses or permits, customary tools and equipment, maintenance, books, supplies and training materials; initial stocks and supplies; placement; acquisition of vending stands or other equipment, initial stocks and supplies for small business enterprises; supervision and management of small business enterprises, merchandising programs or services rendered by severely disabled persons; establishment, improvement, maintenance or extension of public and other nonprofit rehabilitation facilities, centers, workshops, demonstration projects and research. These services shall be provided for handicapped persons in the state whose capacity to earn a living has in any way been destroyed or impaired through industrial accident or otherwise; these persons are entitled to free choice of vendor for any medical or dental services provided under this paragraph;

(c) Formulate plans of cooperation with the commissioner of labor and industry for providing services to workers covered under the workers' compensation act. Those plans are effective only if approved by the governor;

(d) Maintain a contractual relationship with the United States as authorized by the act of congress approved September 1, 1954, known as the "Social Security Amendments of 1954," Public Law 761, Section 221, and the act approved October 30, 1972, known as the Social Security Amendments of 1972, Public Law 92-603, and subsequent amendments. Under the contract, the state will undertake to make determinations referred to in those public laws with respect to all individuals in Minnesota, or with respect to a class or classes of individuals in this state that is designated in the agreement at the state's request. It is the purpose of this relationship to permit the citizens of this state to obtain all benefits available under federal law;

(e) Provide an in-service training program for department employees by paying for its direct costs with state and federal funds;

(f) Conduct research and demonstration projects; provide training and instruction, including establishment and maintenance of research fellowships and traineeships, along with all necessary stipends and allowances; disseminate information to

the handicapped and general public; and provide technical assistance relating to vocational rehabilitation;

(g) Receive and disburse pursuant to law money and gifts available from governmental and private sources for the purpose of vocational rehabilitation;

(h) Design all state plans of vocational rehabilitation services required as a condition to the receipt and disbursement of any money available from the federal government;

(i) Cooperate with other public or private agencies or organizations for the purpose of vocational rehabilitation. Money received from school districts, governmental subdivisions, mental health centers or boards, and private nonprofit organizations is appropriated to the commissioner for conducting joint or cooperative vocational rehabilitation programs;

(j) Enter into contractual arrangements with instrumentalities of federal, state, or local government and with private individuals, organizations, agencies or facilities with respect to providing vocational rehabilitation services;

(k) Take other actions required by state and federal legislation relating to vocational rehabilitation and disability determination programs;

(l) Hire staff and arrange services and facilities necessary to perform the duties and powers specified in this section; and

(m) Adopt, amend, suspend or repeal rules necessary to implement or make specific programs that the commissioner by sections 129A.01 to 129A.09 is empowered to administer.

*History: 1975 c 359 s 23; 1976 c 332 s 3; 1983 c 312 art 1 s 15*

#### **129A.04 DISABILITY DETERMINATIONS; PRIVILEGED INFORMATION.**

No communication or statement furnished by a physician or other professional person to the department or any other agency of the state for use in connection with an agreement or contractual relationship as contemplated in section 129A.03, clause (d), shall be made the subject of any slander, libel or defamation action.

*History: 1976 c 332 s 4*

#### **129A.05 REPORTS, DISCLOSURE.**

Subdivision 1. The employees of the department specifically authorized by the commissioner shall have the right to receive from any public records the names, addresses and information pertinent to their vocational rehabilitation of persons injured or otherwise disabled. Except as provided in subdivision 2, no information obtained from these reports, nor any copy of the same, nor any of the contents thereof, nor other confidential information as defined by the commissioner shall be open to the public, nor shall be disclosed in any manner by any official or clerk or other employee of the state having access thereto, but the same may be used, except as provided in subdivision 2, solely to enable the department to offer the benefits of vocational rehabilitation to the persons injured or otherwise disabled.

Subd. 2. When the employees of the department have knowledge relating to the nature and extent of an injury or disability or have knowledge of other relevant or material facts with respect to any claim made pursuant to chapter 176 by an injured employee, the commissioner shall first obtain the written consent of the injured employee to the release of the information and shall then report to any party to the claim under the workers' compensation law and to the workers' compensation division or the workers' compensation court of appeals, as the case may be, all of the facts within ten days after the department has received written request for such

information from the workers' compensation division or the workers' compensation court of appeals, as the case may be. At a hearing before a compensation judge or the workers' compensation court of appeals on appeal, an employee of the department may, upon the written consent of the injured employee, disclose the facts and conclusions upon which the vocational rehabilitation evaluation of the injured employee was made.

*History: 1975 c 359 s 23; 1976 c 134 s 78; 1976 c 332 s 5*

#### **129A.06 COMMUNITY LONG-TERM SHELTERED WORKSHOPS AND WORK ACTIVITY PROGRAMS.**

Subdivision 1. Any city, town, county, nonprofit corporation, or any combination thereof, may apply to the commissioner for assistance in establishing or operating a community long-term sheltered workshop or work activity program. Application for assistance shall be on forms supplied by the commissioner. Each applicant shall annually submit to the commissioner its plan and budget for the next fiscal year. No applicant shall be eligible for a grant hereunder unless its plan and budget have been approved by the commissioner.

Subd. 2. In order to provide the necessary funds for a long-term sheltered workshop or work activity program, the governing body of any city, town, or county may expend money which may be available for such purposes in the general fund, and may levy a tax which, except when levied by a county, shall not exceed in any one year the following amounts per capita of the population, based upon the last federal census: Cities of the first class, not to exceed ten cents per capita; cities of other than the first class, and towns, not to exceed 30 cents per capita. A tax levied pursuant to this subdivision is not a special levy as defined in section 275.50, subdivision 5, and shall be subject to the limitation provided in sections 275.51 to 275.56. Any city, town, county, or nonprofit corporation may accept gifts or grants from any source for the long term sheltered workshop or work activity program. Any money appropriated, taxed, or received as a gift or grant may be used to match funds available on a matching basis.

*History: 1976 c 332 s 6; 1978 c 522 s 1*

#### **129A.07 COMMUNITY LONG-TERM SHELTERED WORKSHOP BOARDS.**

Subdivision 1. Every city, town, county, nonprofit corporation, or combination thereof establishing a community long-term sheltered workshop or work activity program shall appoint a long-term sheltered workshop board of no fewer than nine members before becoming eligible for the assistance provided by sections 129A.06 to 129A.08. When any city, town, or county singly establishes such a workshop or work activity program, the board shall be appointed by the chief executive officer of the city or the chairman of the governing board of the county or town. When any combination of cities, towns, counties or nonprofit corporations establishes a workshop or work activity program, the chief executive officers of the cities, nonprofit corporations and the chairmen of the governing bodies of the counties or towns shall appoint the board. If a nonprofit corporation singly establishes a workshop or work activity program, the corporation shall appoint the board of directors. Membership on a board shall be representative of the community served and shall include a handicapped person. One-third to one-half of the board shall be representative of industry or business. The remaining members should be representative of lay associations for the handicapped, labor, the general public, and education, welfare, medical, and health professions. Nothing in sections 129A.06 to 129A.08 shall be construed to preclude the appointment of elected or appointed public officials or

members of the board of directors of the sponsoring nonprofit corporation to the board, so long as representation described above is preserved.

Subd. 2. The term of office of each member of the community long-term sheltered workshop or work activity board shall be for four years, measured from the first day of the year of appointment, except as follows: Of the members first appointed, at least three shall be appointed for a term of two years, at least three for a term of three years and at least three for a term of four years. Vacancies shall be filled for the unexpired term in the same manner as original appointments. Any member of a board may be removed by the appointing authority for neglect of duty, misconduct or malfeasance in office, after being given a written statement of charges and an opportunity to be heard thereon.

Subd. 3. Subject to the provisions of sections 129A.06 to 129A.08 and the rules of the department, each community long-term sheltered workshop or work activity program board shall:

- (a) Review and evaluate the need for a long-term sheltered workshop services or work activity program provided pursuant to sections 129A.06 to 129A.08 and report thereon to the commissioner and, when indicated, the public, together with recommendations for additional services and facilities;
- (b) Recruit and promote local financial support for the program from private sources such as community chests, business, industrial and private foundations, voluntary agencies and other lawful sources and promote public support for municipal and county appropriations;
- (c) Promote, arrange and implement working agreements with other educational and social service agencies both public and private and any other allied agencies;
- (d) Advise the commissioner on the adoption and implementation of policies to stimulate effective community relations;
- (e) Review the annual plan and budget and make recommendations thereon;
- (f) When so determined by the authority establishing the program, act as the administrator of the program.

*History: 1976 c 332 s 7*

#### **129A.08 EVALUATION AND FUNDING OF WORKSHOPS AND WORK ACTIVITY PROGRAMS.**

Subdivision 1. **Grants.** The commissioner may make grants to assist cities, towns, counties, nonprofit corporations, or any combination thereof in the establishment, operation and expansion of long-term sheltered workshops or work activity programs. The commissioner may accept federal grants or aids and shall cooperate with federal agencies in any reasonable manner necessary to qualify for federal grants or aids for long-term sheltered workshops or work activity programs.

Subd. 2. **Evaluation; state funding.** At the beginning of each fiscal year, the commissioner shall allocate available funds to long-term sheltered workshops and work activity programs for disbursement during the fiscal year in accordance with approved plans or budgets. The commissioner shall study and recommend to the legislature by March 1, 1985, new allocation formulas which take into consideration effectiveness of the workshop. In its recommendation the commissioner shall calculate the fiscal impact of the various formulas on each workshop and the extent to which a workshop can utilize new allocation formulas. The commissioner shall develop forms to assist the workshops in collecting data necessary to complete the evaluation. Information needed to conduct the evaluations must be submitted by the workshops along with the annual requests for funding. Failure to submit

documentation requested by the commissioner shall result in the withdrawal of all state funding for the workshop.

The commissioner shall from time to time during the fiscal year review the budgets and expenditures of the workshops and programs. If funds are not needed for the workshop or program to which they were allocated, the commissioner may, after reasonable notice and opportunity for hearing, withdraw such funds as are unencumbered and reallocate them to other workshops or programs. The commissioner may withdraw funds from any workshop or program which is not being administered in accordance with its approved plan and budget unless a modified plan and budget is submitted to and approved by the commissioner, and implemented within a reasonable time.

The commissioner shall also withdraw funds from a workshop or program not being administered according to department rules, or not meeting mandatory standards for certification, unless a plan bringing the workshop or program into compliance with the rules and standards is submitted to and approved by the commissioner and implemented within a reasonable time.

**Subd. 3. Operating costs funded.** The grant may not exceed an amount equal to 75 percent of the normal operating expenses of the long-term sheltered workshop or work activity program. Wages paid sheltered employees or work activity program participants are to be excluded in determining operating cost. In the event that there are inadequate funds appropriated to meet the foregoing provisions in full, they shall be prorated proportionately.

**Subd. 4. Evaluation of workshops.** The workshop evaluation must include, but not be limited to, the following considerations:

- (a) Wages and benefits paid to sheltered employees and number of hours worked;
- (b) Rate of placement in competitive employment;
- (c) Opportunities for sheltered employees to participate in decisions affecting their employment;
- (d) Workshop responsiveness to sheltered employees grievances;
- (e) Increases in individual sheltered employee productivity;
- (f) Implementing innovative ways to increase placement and retention of sheltered employees in competitive employment, or in sheltered positions with competitive employers, or innovative ways that increase sheltered employee wages;
- (g) Efficiency of the workshops; and
- (h) Types and levels of disability of the sheltered employees and willingness of the workshop to accept and assist persons with serious behavioral, mental, sensory or physical disabilities.

The evaluation must take into account the disability levels of the sheltered employees, the geographic location and size of the workshop and the economic conditions of the surrounding community.

**Subd. 5. Rule authority.** In addition to the powers already conferred on him by law, the commissioner shall promulgate rules on:

- (a) state certification of all long-term sheltered workshops and work activity programs;
- (b) eligibility of community long-term sheltered workshops and work activity programs to receive state grants;
- (c) standards for qualification of personnel and quality of professional service and for in-service training and education leave programs for personnel;
- (d) eligibility for service so that no person will be denied service on the basis of race, creed or color;

- (e) regulatory fees for consultation services;
- (f) standards and criteria by which handicapped persons are to be judged eligible for the services;
- (g) evaluation criteria for long-term sheltered workshops; and
- (h) program evaluation criteria for work activity programs in order to determine the extent to which these programs meet the goals and objectives established in state and federal law relating to work activity programs.

The rules on evaluation criteria for long-term sheltered workshops must be in effect by July 1, 1985. The rules must be used in making allocations for fiscal years beginning after June 30, 1986.

Subd. 6. **Technical assistance.** The commissioner shall provide technical assistance within available resources to workshops and programs based on the need reflected in an evaluation.

*History: 1976 c 332 s 8; 1984 c 627 s 2*

#### **129A.09 EXPENDITURE OF FEDERAL FUNDS.**

Notwithstanding the provisions of Laws 1975, Chapter 433, Section 2, Subdivision 9, any additional federal funds which become available to the state of Minnesota for vocational rehabilitation purposes after March 1, 1976 and April 1 of each fiscal year thereafter as a result of a reallocation of funds returned by other states or release of additional funds may be carried over and expended in the next fiscal year. The state of Minnesota shall have earned these funds in the year they are received with state expenditures in accordance with the federal-state formula in effect for that year. These funds shall be subject to the provisions of Laws 1976, Chapter 332, Section 9, Subdivision 8.

*History: 1976 c 332 s 11*

APPENDIX B

B.1. TASK FORCE ON LONG-TERM SHELTERED  
EMPLOYMENT MEMBERSHIP LIST

TASK FORCE ON LONG-TERM SHELTERED  
EMPLOYMENT RESOURCE PERSONS AND  
OTHER COMMITTEE PARTICIPANTS

B.2. FUNDING METHODS ADVISORY COMMITTEE

B.3. ADVISORY COMMITTEE ON DIFFICULTY INDEX

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