

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Dowd**

A Bill

SENATE BILL

For An Act To Be Entitled

8 "AN ACT TO AMEND A.C.A. 19-11-501 ET SEQ. TO EXPAND THE
9 MEMBERSHIP OF THE COMMITTEE ON PURCHASES OF WORKSHOP-MADE
10 PRODUCTS AND TO PROVIDE THAT THE SAID DUTIES AND
11 RESPONSIBILITIES OF THE COMMITTEE SHALL INCLUDE THE
12 PROVISION OF SERVICES AS WELL AS PRODUCTS."

13

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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16 SECTION 1. Arkansas Code 19-11-501 is hereby amended to read as
17 follows:

18 "19-11-501. Creation.

19 (a) There is created a committee to be known as the Committee on
20 Purchases of Workshop-Made Products and Services (hereinafter referred to as
21 the 'Committee') to be composed of a private citizen conversant with the
22 problems incident to the employment of the disabled and a representative from
23 each of the following:

24 (1) The Office of State Purchasing, Department of Finance and
25 Administration;

26 (2) The Department of Human Services, Division of Mental Health
27 Services;

28 (3) The University of Arkansas for Medical Sciences;

29 (4) The Department of Human Services, Division of Children and Family
30 Services;

31 (5) Labor;

32 (6) A sheltered workshop;

33 (7) The Department of Human Services, Division of Rehabilitation
34 Services;

35 (8) The State Highway and Transportation Department;

1 (9) The Game and Fish Commission.

2 (b) The members of the committee shall be appointed by the Governor and
3 shall serve without additional compensation.

4 (c) The rehabilitation services Facility Consultation and Planning
5 Section Administrator shall be chairman for the committee."
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7 SECTION 2. Arkansas Code 19-11-502 is hereby amended to read as
8 follows:

9 "19-11-502. Duties.

10 (a) It shall be the duty of the Committee to:

11 (1) Determine the fair market price of all products provided or
12 manufactured by the Arkansas disabled and offered for sale to the state
13 government by any nonprofitmaking workshop for the Arkansas disabled,
14 organized under the laws of this state, the Committee shall not establish the
15 fair market price on services offered by participating workshops;

16 (2) Revise such prices from time to time in accordance with changing
17 market conditions; and

18 (3) Make such rules and regulations regarding specifications, time of
19 delivery, authorization of a central nonprofitmaking agency to facilitate the
20 distribution of orders among the workshops for the disabled, and other
21 relevant matters of procedure as shall be necessary to carry out the purposes
22 of this subchapter.

23 (b) No change in price shall become effective prior to the expiration
24 of fifteen (15) days from the date on which such change is made by the
25 committee."
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27 SECTION 3. Arkansas Code 19-11-503 is hereby amended to read as
28 follows:

29 "19-11-503. Purchase required - Exception.

30 (a) All suitable commodities hereafter procured in accordance with
31 applicable state specifications by or for any state department, institution,
32 or agency electing to participate in this process shall be procured from
33 nonprofitmaking workshops for the disabled in all cases where such commodities
34 are available within the period specified and at the price determined by the
35 Committee to be the fair market price for the article so procured.

1 (b) Services offered by workshops shall be procured by competitive
2 sealed bidding as specified by Arkansas Code Annotated 19-11-229, competitive
3 sealed proposals as specified by Arkansas Code 19-11-230, or competitive
4 bidding, as specified by Arkansas Code Annotated 19-11-234, subject to
5 purchase exceptions set forth in subdivision nine (9) of this section.

6 (c) This section shall not apply in any case(s) where products and
7 services are available for procurement from any state department, institution,
8 or agency and procurement therefrom is required under the provisions of any
9 law in effect on or after March 1, 1991."

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11 SECTION 4. Arkansas Code 19-11-504 is hereby amended to read as
12 follows:

13 "19-11-504. Regulations.

14 The Chairman of the Committee shall be responsible for developing
15 regulations governing implementation of this subchapter:

16 (1) DEFINITIONS. As used in this section, unless the context otherwise
17 requires:

18 (A) 'Workshops' means places, including any places certified,
19 regulated or licensed by any Division or Office of the Department of Human
20 Services within the State of Arkansas, where any manufacture or handiwork is
21 carried on and which are operated for the primary purpose of providing
22 evaluation, training, and gainful employment to disabled individuals of
23 Arkansas:

24 (i) As an interim step in the rehabilitation process for those who
25 cannot be readily absorbed in the competitive labor market; or

26 (ii) During such time as employment opportunities for them in the
27 competitive labor market do not exist.

28 (B) 'Disabled individuals' means those persons who have medically or
29 psychiatrically determined physical, mental or developmental disability
30 constituting a substantial vocational handicap.

31 (C) 'Facilities Section' means that section of the Division of
32 Rehabilitation Services which exists to maintain an established statewide plan
33 for the utilization, construction, expansion, and improvement of workshops and
34 rehabilitation facilities in Arkansas.

35 (D) 'Ordering office' means any state department, independent

1 establishment, board, commission, bureau, service, or division of the state
2 government and any wholly owned state corporation.

3 (E) 'Fiscal year' means July 1 of one year through June 30 of the next
4 year;

5 (F) 'Commodities' means all property including, but not limited to,
6 equipment, printing, stationery, supplies, and insurance but excluding leases
7 on real property, excluding real property or a permanent interest in real
8 property;

9 (G) 'Services' means the furnishing of labor, time, or effort by a
10 contractor, not involving the delivery of a specific end product other than
11 reports which are merely incidental to the required performance. This term
12 shall not include employment agreements, collective bargaining agreements, or
13 architectural or engineering contracts requiring approval of State Building
14 Services.

15 (H) 'Products', for purposes of this act, means commodities or
16 services.

17 (2) POLICY. All state departments and agencies electing to participate
18 are required to purchase their requirements of needed available and suitable
19 products and may purchase suitable services from nonprofitmaking sheltered
20 workshops for disabled individuals unless such commodities and services are
21 authorized by prior legislation for production in another state agency,
22 department, or institution;

23 (3) RESPONSIBILITIES OF THE COMMITTEE. It is the responsibility of the
24 Committee to determine which commodities and services are suitable for sale
25 under the program, the fair market price of suitable commodities (including
26 revisions as appropriate, from time to time), and the applicable purchase
27 procedures. The committee shall also make rules and regulations regarding
28 specifications, delivery, authorization of a central nonprofitmaking agency to
29 facilitate distribution of orders among workshops, and such other relevant
30 matters that may be necessary;

31 (4) SCHEDULES OF WORKSHOP-MADE PRODUCTS. The committee shall issue to
32 the ordering office through the Office of State Purchasing a schedule of
33 workshop-made commodities and services, and the conditions under which they
34 are to be procured from the workshops. The schedule shall include the item or
35 service description, specification identification, price, and other pertinent

1 information;

2 (5) RESPONSIBILITIES OF THE DIVISION OF REHABILITATION SERVICES,
3 FACILITIES SECTION.

4 (A) The Facilities Section is designated as the agency to facilitate
5 the equitable distribution of government orders among the workshops and is
6 delegated the responsibility of assisting the Committee to assure that these
7 regulations are carried out.

8 (B) The Facilities Section shall undertake the following functions and
9 responsibilities:

10 (i) Issuance of allocations and clearances as provided in subdivisions
11 (8) and (9) of this section;

12 (ii) Inspection, on a continuing basis, of the workshops to determine
13 that they operate in accordance with the requirements of this subchapter and
14 the regulations in this section;

15 (iii) Maintenance of records of all participating workshops and such
16 necessary data as will enable the section to allocate orders equitably;

17 (iv) Submission to the committee of a comprehensive annual report for
18 each fiscal year concerning all of its operations including financial
19 statements, significant accomplishments and developments, a compilation of the
20 annual reports received from the workshops, and such other details as the
21 Facilities Section considers appropriate or the committee may request;

22 (v) Entering into contracts with the state government for the
23 furnishing to a state ordering office of commodities and services offered by
24 workshops;

25 (6) QUALIFICATIONS AND RESPONSIBILITIES OF WORKSHOPS.

26 (A) In order to qualify for participation in the program as a workshop,
27 an organization shall submit an application to the Facilities Section. It
28 shall submit with this application information regarding work force, and
29 designating those who are disabled, plant facilities and equipment,
30 administrative management, and financial support available to and in use by
31 the agency. There should be included a list of the commodities and services
32 offered for sale to the state together with a certification as provided in
33 paragraph (D) of this subdivision. If a corporate body, it shall include
34 copies of its articles and bylaws; if an instrumentality of a state, it shall
35 submit copies of state laws and related documents showing its authority and

1 permitted activities.

2 (B) Within sixty (60) days after receipt of an application for
3 participation in this program, the Facilities Section shall inspect the
4 applicant organization and make recommendations to the Committee regarding the
5 requested participation. If the Committee approves, the Facilities Section
6 will include the organization on the schedule of workshops qualified to
7 receive allocation or orders. If the Facilities Section considers it
8 desirable, such organization(s) may be permitted to participate in receiving
9 government orders pending approval by the Committee. Such participation may
10 not exceed a period of six (6) months without Committee approval.

11 (C) Workshops shall:

12 (i) Furnish commodities and services in strict accordance with the
13 allocation and government order;

14 (ii) Maintain records of wages paid, hours of employment, and sales, as
15 well as files containing medical or psychiatric reports of workshop employee
16 disabilities, copies of which shall be available to the Facilities Section;

17 (iii) Make available pertinent books and records of the agency for
18 inspection at any reasonable time to representatives of the Committee or the
19 Facilities Section;

20 (iv) Submit to the Facilities Section by September 1 an annual report
21 for the preceding fiscal year. This report shall include data on disabled
22 workers, wages and wage supplements, hours of employment, sales, whether the
23 workshop requires a sheltered workshop certificate from the United States
24 Department of Labor and special minimum rates authorized where such
25 certificate is held, and such other relevant information as may be required by
26 the Committee or the Facilities Section.

27 (D) A workshop shall not be qualified to furnish a product for sale to
28 the government until the section has ascertained that the workshop has
29 adequate capability to manufacture the commodity or deliver the service.

30 (7) PRICE DETERMINATION

31 (A) In determining the fair market price of a commodity the Committee
32 will consider recommendations from the ordering office(s) and workshops.
33 Recommendations from the workshops shall be submitted to the Committee through
34 the Facilities Section, which shall indicate its concurrence or alternate
35 recommendation in all instances of price determination or change. Price

1 recommendations may be subsequently submitted by the Committee to a government
2 agency for analysis. Where the analyzing agency does not concur with the
3 recommendations, the Committee chairman will appoint a subcommittee of three
4 (3) members of the Committee to consider the matter and recommend a fair
5 market price to the Committee.

6 (B) Unless otherwise provided by the Committee in the notice of price
7 changes, prices in effect on the date of allocation by the section will apply
8 to the purchase involved. However, in no event may a change in price become
9 effective before fifteen (15) days after the change is made by the Committee;

10 (8) Purchase Procedure.

11 (A) Where a product is identified in the schedule of workshop-made
12 products as being available through the Office of State Purchasing, it shall
13 be obtained in accordance with the requisitioning procedures of the supplying
14 agency.

15 (B) Where an item is not identified in the schedule of workshop-made
16 products as available from the Office of State Purchasing, the ordering office
17 shall submit its requirements to the Facilities Section stating the product
18 description, stock number, quantity, and place and time of delivery, and
19 request that an allocation be made. The Facilities Section shall make
20 allocations promptly and equitably, furnish copies to the ordering office and
21 to the workshop receiving the allocation, and direct the ordering office
22 whether to forward the order to the Facilities Section or the workshops. An
23 allocation is a preliminary document and is not a government order for the
24 commodities or services described.

25 (C) Upon receipt of an allocation, the ordering office shall promptly
26 furnish a suitable order to the Facilities Section or the workshops as
27 directed by the Facilities Section. Where this cannot be done promptly, the
28 ordering office shall so advise the Facilities Section and the workshop. A
29 government order should allow lead time sufficient for purchase of raw
30 materials, production, and delivery. Where it does not, the Facilities Section
31 or the workshop, depending on which agency received the order, may request an
32 extension of the delivery date which should be granted if feasible. Where it
33 is not feasible, the ordering office shall notify the Facilities Section or
34 the workshop, as appropriate, and request the section to reallocate or to
35 issue a purchase exception for purchase from a commercial source as provided

1 for in subdivision (9) of this section. A copy of each order issued to a
2 workshop shall be sent to the Facilities Section.

3 (D) Workshop-made commodities and services may be ordered without
4 requesting an allocation for each order providing prior arrangements have been
5 made with the Facilities Section for sending orders for specified items to
6 designated workshops. Copies of those orders shall be submitted to the
7 Facilities Section by the aforementioned ordering office.

8 (E) Requests for allocation shall be submitted to: Facility
9 Consultation and Planning Facilities Section, Rehabilitation Services, 300
10 Donaghey Plaza North, Little Rock, Arkansas, 72203.

11 (F) If an ordering office desires packing, packaging, or marking of
12 products other than as provided in the schedule of workshop-made commodities
13 and services, the difference in cost thereof, if any, shall be charged to the
14 account of the ordering office;

15 (9) PURCHASE EXCEPTIONS. An ordering office may purchase from a non-
16 workshop source products listed in the schedule of workshop-made products in
17 any of the following circumstances:

18 (A) Necessity requires delivery within two (2) weeks, and the
19 Facilities Section cannot give assurance of positive availability;

20 (B) When the Facilities Section has notified the ordering office that
21 products listed in the request for allocation cannot be furnished within the
22 period specified. In such cases purchase action must be taken within fifteen
23 (15) days of receipt of notice from the section or as may be further extended
24 by the section;

25 (B) When the Facilities Section has notified the ordering office that
26 commodities and services listed in the request for allocation cannot be
27 furnished within the period specified. In such cases purchase action must be
28 taken within fifteen (15) days of receipt of notice from the Facilities
29 Section or as may be further extended by the Facilities Section;

30 (C) When commodities listed on the schedule of workshop-made
31 commodities can be purchased from a non-workshop source by the agency for a
32 price at least five percent (5%) lower than workshop-made commodities included
33 in the schedule. If any agency proposes to purchase commodities on the
34 schedule from a commercial source at a price five percent (5%) or more lower
35 than the price of the workshop-made product, the agency shall so advise the

1 Committee and offer the Committee an opportunity to reduce the price of the
2 workshop-made commodities to within five percent (5%) of the price of the
3 products when purchased from a commercial source;

4 (D) Services offered by any workshop may be procured by any agency in
5 accordance with Section 3(b) herein, provided that the procuring agency may
6 purchase the services from any workshop submitting a price not more than five
7 percent (5%) above the lowest price submitted from a non-workshop source.

8 (10) DELIVERIES. Workshop-made commodities will be delivered in
9 accordance with the terms of the purchase order. Bills of lading may
10 accompany orders or be otherwise furnished, but they must be supplied
11 promptly. Failure by an ordering office to furnish bills of lading promptly
12 may result in an excusable cause for delay in delivery;

13 (11) ADJUSTMENT AND CANCELLATION OF ORDERS. Where the Facilities
14 Section or a workshop fails to comply with the terms of a government order,
15 the ordering office shall make every effort to negotiate an adjustment before
16 taking action to cancel the order. Where a government order is canceled for
17 failure to comply with its terms, the Facilities Section shall be notified
18 and, if practicable, requested to reallocate the order;

19 (12) VIOLATIONS. Any alleged violation of these regulations shall be
20 investigated by the Facilities Section, which shall notify the workshop
21 concerned and afford it an opportunity to submit a statement of facts and
22 evidence. The Facilities Section shall report its findings to the Committee,
23 together with its recommendations, including a recommendation as to whether
24 allocations to the workshops concerned should be suspended for a period of
25 time. In reviewing the case, the Committee may request the submission of
26 additional evidence or may hold a hearing on the matter. Pending a decision
27 by the Committee, the Facilities Section may temporarily suspend allocations
28 to the workshop concerned."

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30 SECTION 5. All provisions of this act of a general and permanent nature
31 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
32 Revision Commission shall incorporate the same in the Code.

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34 SECTION 6. If any provision of this act or the application thereof to
35 any person or circumstance is held invalid, such invalidity shall not affect

1 other provisions or applications of the act which can be given effect without
2 the invalid provision or application, and to this end the provisions of this
3 act are declared to be severable.

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5 SECTION 7. All laws and parts of laws in conflict with this act are
6 hereby repealed.

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