

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

A BILL ACT 853 OF 1991
SENATE BILL 707

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §§19-11-501 ET.
9 SEQ. TO EXPAND THE MEMBERSHIP OF THE COMMITTEE ON
10 PURCHASES OF WORKSHOP-MADE PRODUCTS AND TO PROVIDE THAT
11 THE SAID DUTIES AND RESPONSIBILITIES OF THE COMMITTEE
12 SHALL INCLUDE THE PROVISION OF SERVICES AS WELL AS
13 PRODUCTS; AND FOR OTHER PURPOSES."

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

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

19 "19-11-501. Creation.

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

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

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

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

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

32 (5) Labor;

33 (6) A sheltered workshop;

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

36 (8) The State Highway and Transportation Department; and

1

2 (9) The Game and Fish Commission.

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

5 (c) The Rehabilitation Services, Facility Consultation and Planning
6 Section Administrator shall be chairman for the committee."

7

8 SECTION 2. Arkansas Code Annotated §19-11-502 is amended to read as
9 follows:

10 "19-11-502. Duties.

11 (a) It shall be the duty of the committee to:

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

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

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

24 (b) No change in price shall become effective prior to the expiration
25 of fifteen (15) days from the date on which such change is made by the
26 committee."

27

28 SECTION 3. Arkansas Code Annotated §19-11-503 is amended to read as
29 follows:

30 "19-11-503. Purchase required - Exception.

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

1 committee to be the fair market price for the article, articles or so
2 procured.

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

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

13

14 SECTION 4. Arkansas Code Annotated §19-11-504 is amended to read as
15 follows:

16 "19-11-504. Regulations.

17 The chairman of the committee shall be responsible for developing
18 regulations governing implementation of this act.

19 (1) Definitions. As used in this section, unless the context otherwise
20 requires:

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

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

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

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

34 (C) 'Facilities Section' means that section of the Division of
35 Rehabilitation Services which exists to maintain an established statewide plan

1 for the utilization, construction, expansion, and improvement of workshops and
2 rehabilitation facilities in Arkansas.

3 (D) 'Ordering office' means any state department, independent
4 establishment, board, commission, bureau, service, or division of the state
5 government and any wholly owned state corporation.

6 (E) 'Fiscal year' means July 1 of one year through June 30 of
7 the next year.

8 (F) 'Commodities' means all property including, but not limited
9 to: equipment, printing, stationery, supplies, and insurance but excluding
10 leases on real property, excluding real property or a permanent interest in
11 real property.

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

18 (H) 'Products', for purposes of this act, means commodities or
19 services;

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

26 (3) Responsibilities of the Committee. It is the responsibility of the
27 committee to determine which commodities and services are suitable for sale
28 under the program, the fair market price of suitable commodities (including
29 revisions as appropriate, from time to time), and the applicable purchase
30 procedures. The committee shall also make rules and regulations regarding
31 specifications, delivery, authorization of a central nonprofitmaking agency to
32 facilitate distribution of orders among workshops, and such other relevant
33 matters that may be necessary; (4) Schedules of Workshop-Made Products
34 and Services. The committee shall issue to the ordering office through the
35 Office of State Purchasing a schedule of workshop-made commodities and

1 services, and the conditions under which they are to be procured from the
2 workshops. The schedule shall include the item or service description,
3 specification identification, price, and other pertinent information;

4 (5) Responsibilities of the Division of Rehabilitation Services,
5 Facilities Section.

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

10 (B) The Facilities Section shall undertake the following
11 functions and responsibilities:

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

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

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

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

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

29 (6) Qualifications and Responsibilities of Workshops.

30 (A) In order to qualify for participation in the program as a
31 workshop, an organization shall submit an application to the Facilities
32 Section. It shall submit with this application information regarding work
33 force, and designating those who are disabled, plant facilities and equipment,
34 administrative management, and financial support available to and in use by
35 the agency. There should be included a list of the commodities and services

1 offered for sale to the state together with a certification as provided in
2 paragraph (D) of this subdivision. If a corporate body, it shall include
3 copies of its articles and bylaws; if an instrumentality of a state, it shall
4 submit copies of state laws and related documents showing its authority and
5 permitted activities.

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

15 (C) Workshops shall:

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

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

22 (iii) Make available pertinent books and records of the
23 agency for inspection at any reasonable time to representatives of the
24 committee or the Facilities Section;

25 (iv) Submit to the Facilities Section by September 1, an
26 annual report for the preceding fiscal year. This report shall include data
27 on disabled workers, wages and wage supplements, hours of employment, sales,
28 whether the workshop requires a Facilities Sheltered Workshop Certificate from
29 the United States Department of Labor and special minimum rates authorized
30 where such certificate is held, and such other relevant information as may be
31 required by the committee or the Facility Section.

32 (D) A workshop shall not be qualified to furnish a commodity or
33 service for sale to the government until the Facilities Section has
34 ascertained that the workshop has adequate capability to manufacture the
35 commodity or deliver the service;

1 (7) Price Determination.

2 (A) In determining the fair market price of a commodity, the
3 committee will consider recommendations from the ordering office(s) and
4 workshops. Recommendations from the workshops shall be submitted to the
5 committee through the Facilities Section, which shall indicate its concurrence
6 or alternate recommendation in all instances of price determination or change.
7 Price recommendations may be subsequently submitted by the committee to a
8 government agency for analysis. Where the analyzing agency does not concur
9 with the recommendations, the committee chairman will appoint a subcommittee
10 of three (3) members of the committee to consider the matter and recommend a
11 fair market price to the committee.

12 (B) Unless otherwise provided by the committee in the notice of
13 price changes, prices in effect on the date of allocation by the Facilities
14 Section will apply to the purchase(s) involved. However, in no event may a
15 change in price become effective before fifteen (15) days after the change is
16 made by the committee;

17 (8) Purchase Procedure.

18 (A) Where a commodity or service is identified in the schedule of
19 workshop-made commodities and services as being available through the Office
20 of State Purchasing, it shall be obtained in accordance with the
21 requisitioning procedures of the supplying agency.

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

32 (C) Upon receipt of an allocation, the ordering office shall
33 promptly furnish a suitable order to the Facilities Section or the workshops
34 as directed by the Facilities Section. Where this cannot be done promptly,
35 the ordering office shall so advise the Facilities Section and the workshop.

1 A government order should allow lead time sufficient for purchase of raw
2 materials, production, and delivery. Where it does not, the Facilities
3 Section or the workshop, depending on which agency received the order, may
4 request an extension of the delivery date which should be granted if feasible.
5 Where it is not feasible, the ordering office shall notify the Facility
6 Section or the workshop, as appropriate, and request the Facility Section to
7 reallocate or to issue a purchase exception for purchase from a commercial
8 source as provided for in subdivision (9) of this Facilities Section. A copy
9 of each order issued to a workshop shall be sent to the Facilities Section.

10 (D) Workshop-made commodities and services may be ordered without
11 requesting an allocation for each order providing prior arrangements have been
12 made with the Facilities Section for sending orders for specified items to
13 designated workshops. Copies of those orders shall be submitted to the
14 Facilities Section by the afore mentioned ordering office.

15 (E) Requests for allocation shall be submitted to: Facility
16 Consultation and Planning Facilities Section, Rehabilitation Services, 300
17 Donaghey Plaza North , Post Office Box 3781, Little Rock, Arkansas, 72203.

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

22 (9) Purchase Exceptions. An ordering office may purchase from a non-
23 workshop source commodities or services listed in the schedule of workshop-
24 made commodities and services in any of the following circumstances:

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

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

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

1 schedule from a commercial source at a price five percent (5%) or more lower
2 than the price of the workshop-made product, the agency shall so advise the
3 committee and offer the committee an opportunity to reduce the price of the
4 workshop-made commodities to within five percent (5%) of the price of the
5 products when purchased from a commercial source;

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

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

16 (11) Adjustment and Cancellation of Orders. Where the Facility Section
17 or a workshop fails to comply with the terms of a government order, the
18 ordering office shall make every effort to negotiate an adjustment before
19 taking action to cancel the order. Where a government order is cancelled for
20 failure to comply with its terms, the Facilities Section shall be notified
21 and, if practicable, requested to reallocate the order;

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

32

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

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

APPROVED: 3/29/91