

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/13/01 S4/5/01 S4/10/01

A Bill

Act 1718 of 2001
HOUSE BILL 2250

5 By: Representative Salmon
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7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH A WORK CENTER-MADE PRODUCTS
10 PROGRAM; AND FOR OTHER PURPOSES.
11
12
13

Subtitle

15 TO ESTABLISH A WORK CENTER-MADE PRODUCTS
16 PROGRAM.
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18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code Title 19, Chapter 11 is amended to add an
22 additional subchapter to read as follows:

23 19-11-901. Purchase required – Exception.

24 (a) All suitable commodities and services, including small purchases,
25 hereafter procured in accordance with applicable state specifications by or
26 for any state department, institution, or agency shall be procured from
27 nonprofit work centers for the disabled in all cases where such commodities
28 are available within the period specified and at the fair market price for
29 the article or articles so procured.

30 (b) Services offered by work centers shall be procured by competitive
31 sealed bidding as specified by § 19-11-229, competitive sealed proposals as
32 specified by § 19-11-230, or competitive bidding as specified by § 19-11-234,
33 subject to purchase exceptions set forth in § 19-11-902.

34 (c) This section shall not apply in any cases where products and
35 services are available for procurement from any state department,
36 institution, or agency, and procurement therefrom is required under the

1 provisions of any law in effect on or after March 1, 1991.

2
3 19-11-902. Regulations.

4 (a) The Office of State Purchasing shall be responsible for developing
5 regulations governing implementation of this subchapter.

6 (b) For purposes of this subchapter:

7 (1) "Commodities" means all property, including, but not limited
8 to, equipment, printing, stationery, supplies, and insurance, but excluding
9 leases on real property, excluding real property or a permanent interest in
10 real property;

11 (2) "Disabled individuals" means those persons who have a
12 medically or psychiatrically determined physical, mental, or developmental
13 disability constituting a substantial vocational handicap;

14 (3) "Arkansas Rehabilitation Services" means the Arkansas
15 Rehabilitation Services Division of the Department of Workforce Education;

16 (4) "Fiscal year" means July 1 of one (1) year through June 30
17 of the next year;

18 (5) "Ordering office" means any state department, independent
19 establishment, board, commission, bureau, service, or division of state
20 government and any wholly owned state corporation;

21 (6) "Products", for purposes of this subchapter, means
22 commodities or services wherein the price of the commodities includes at
23 least twenty percent (20%) value added when the work center is awarded a
24 contract using the ten percent (10%) preference and in the case of services,
25 that they are performed by the disabled;

26 (7) "Services" means the furnishing of labor, time, or effort by
27 a contractor, not involving the delivery of a specific end product other than
28 reports which are merely incidental to the required performance. This term
29 shall not include employment agreements, collective bargaining agreements, or
30 architectural or engineering contracts requiring approval of State Building
31 Services;

32 (8) "Sheltered workshop" means a work center which has:

33 (A) Certification from the United States Department of
34 Labor as a sheltered workshop; and

35 (B) Been licensed by the Division of Developmental
36 Disabilities Services of the Department of Human Services or certification

1 from Arkansas Rehabilitation Services; and

2 (9)(A) "Work centers" means any facility certified by the
3 Arkansas Rehabilitation Services where any manufacture or handiwork is
4 carried on and which are operated for the primary purpose of providing
5 evaluation, training, and gainful employment to disabled individuals of
6 Arkansas:

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

9 (ii) During such time as employment opportunities
10 for them in the competitive labor market do not exist;

11 (B) "Work centers" includes sheltered work centers;

12 (c) Policy. All state agencies as defined in § 19-11-203 are required
13 to purchase their requirements of needed available and suitable products and
14 purchase suitable services from nonprofit work centers for disabled
15 individuals unless such commodities and services are authorized by prior
16 legislation for production in another state agency, department, or
17 institution.

18 (d) Schedules of Work center-Made Products and Services. The Office of
19 State Purchasing shall issue to all agency purchasing agents a schedule of
20 work center-made commodities and services and the conditions under which they
21 are to be procured from the workshops. The schedule shall include the item
22 or service description.

23 (e) Responsibilities of Arkansas Rehabilitation Services. Arkansas
24 Rehabilitation Services shall undertake the inspection, on a continuing
25 basis, of the workshops certified by Arkansas Rehabilitation Services to
26 determine that they operate in accordance with the requirements of the
27 statute and the regulations of this section.

28 (f) Qualifications and Responsibilities of Work Centers.

29 (1) In order to qualify for participation in the program as a
30 work center, an organization shall submit an application to the Office of
31 State Purchasing. If required for all vendors, there should be included a
32 list of the commodities and services offered for sale to the state.

33 (2) Work centers shall:

34 (A) Furnish commodities and services in strict accordance
35 with the allocation and government order;

36 (B) Maintain records of wages paid, hours of employment,

1 and sales;

2 (C) Make available pertinent books and records of the
3 agency for inspection at any reasonable time to representatives of the
4 Arkansas Rehabilitation Services; and

5 (D) Submit to the Arkansas Rehabilitation Services by
6 September 1 an annual report for the preceding fiscal year. This report
7 shall include data on disabled workers, wages and wage supplements, hours of
8 employment, sales, whether the workshop requires a facilities sheltered
9 workshop certificate from the United States Department of Labor and special
10 minimum rates authorized where such certificate is held, and such other
11 relevant information as may be required.

12 (g) Purchase Procedure. Where a commodity or service is identified in
13 the schedule of work center-made commodities and services as being available
14 through the Office of State Purchasing, it shall be obtained in accordance
15 with the requisitioning procedures of the supplying agency.

16 (h) Purchase Exceptions. An ordering office may purchase from a
17 nonworkshop source commodities or services listed in the schedule of work
18 center-made commodities and services in any of the following circumstances:

19 (1) Necessity requires delivery within *the specified period*, and
20 the work center cannot give assurance of positive availability;

21 (2) When commodities listed on the schedule of work center-made
22 commodities can be purchased from a non-work center source by the agency for
23 a price *more than* ten percent (10%) lower than work center-made commodities
24 *included in the schedule*;

25 (3) Services offered by any work center *shall* be procured by any
26 agency in accordance with § 19-11-902 at a price *not more than* ten percent
27 (10%) above the lowest price submitted from a non-work center source.

28 (i) Deliveries. Work center-made product commodities will be
29 delivered in accordance with the terms of the purchase order.

30 (j) Adjustment and Cancellation of Orders. Where a workshop fails to
31 comply with the terms of a government order, the ordering office shall make
32 *reasonable efforts* to negotiate an adjustment before taking action to cancel
33 the order.

34 (k) Violations. Any alleged violation of these regulations shall be
35 investigated by the *Office of State Purchasing*, which shall notify the work
36 center concerned and afford it an opportunity to submit a statement of facts

1 and evidence.

2

3 SECTION 2. Arkansas Code Title 19, Chapter 11, Subchapter 5 is
4 repealed:

5 ~~19-11-501. Creation.~~

6 ~~(a) There is created a committee to be known as the Committee on~~
7 ~~Purchases of Workshop-Made Products and Services, hereinafter referred to as~~
8 ~~the committee, to be composed of a private citizen conversant with the~~
9 ~~problems incident to the employment of the disabled and a representative from~~
10 ~~each of the following:-~~

11 ~~(1) The Office of State Purchasing, Department of Finance and~~
12 ~~Administration;-~~

13 ~~(2) The Department of Human Services, Division of Mental Health~~
14 ~~Services;-~~

15 ~~(3) The University of Arkansas for Medical Sciences;-~~

16 ~~(4) The Department of Human Services, Division of Children and~~
17 ~~Family Services;-~~

18 ~~(5) Labor;-~~

19 ~~(6) A sheltered workshop;-~~

20 ~~(7) The Department of Education, Arkansas Rehabilitation~~
21 ~~Services;-~~

22 ~~(8) The Arkansas State Highway and Transportation Department;-~~
23 ~~and~~

24 ~~(9) The Arkansas State Game and Fish Commission.~~

25 ~~(b) The members of the committee shall be appointed by the Governor~~
26 ~~and shall serve without additional compensation.~~

27 ~~(c) The Arkansas Rehabilitation Services, Facility Consultation and~~
28 ~~Planning Section administrator shall be chairman for the committee.~~

29 ~~19-11-502. Duties.~~

30 ~~(a) It shall be the duty of the committee to:-~~

31 ~~(1) Determine the fair market price of all products provided or~~
32 ~~manufactured by the Arkansas disabled and offered for sale to the state~~
33 ~~government by any nonprofit-making workshop for the Arkansas disabled~~
34 ~~organized under the laws of this state. The committee shall not establish the~~
35 ~~fair market price on services offered by participating workshops;-~~

36 ~~(2) Revise such prices from time to time in accordance with~~

1 ~~changing market conditions; and~~

2 ~~(3) Make such rules and regulations regarding specifications,~~
3 ~~time of delivery, authorization of a central nonprofit making agency to~~
4 ~~facilitate the distribution of orders among the workshops for the disabled,~~
5 ~~and other relevant matters of procedure as shall be necessary to carry out~~
6 ~~the purposes of this subchapter.~~

7 ~~(b) No change in price shall become effective prior to the expiration~~
8 ~~of fifteen (15) days from the date on which such change is made by the~~
9 ~~committee.~~

10 ~~19-11-503. Purchase required—Exception.~~

11 ~~(a) All suitable commodities hereafter procured in accordance with~~
12 ~~applicable state specifications by or for any state department, institution,~~
13 ~~or agency electing to participate in this process shall be procured from~~
14 ~~nonprofit making workshops for the disabled in all cases where such~~
15 ~~commodities are available within the period specified and at the price~~
16 ~~determined by the committee to be the fair market price for the article or~~
17 ~~articles so procured.~~

18 ~~(b) Services offered by workshops shall be procured by competitive~~
19 ~~sealed bidding as specified by § 19-11-229, competitive sealed proposals as~~
20 ~~specified by § 19-11-230, or competitive bidding as specified by § 19-11-234,~~
21 ~~subject to purchase exceptions set forth in § 19-11-504(9).~~

22 ~~(c) This section shall not apply in any cases where products and~~
23 ~~services are available for procurement from any state department,~~
24 ~~institution, or agency, and procurement therefrom is required under the~~
25 ~~provisions of any law in effect on or after March 1, 1991.~~

26 ~~19-11-504. Regulations.~~

27 ~~The chairman of the committee shall be responsible for developing~~
28 ~~regulations governing implementation of this subchapter.~~

29 ~~(1)(A) "Workshops" means places, including any places certified,~~
30 ~~regulated, or licensed by any division or office of the Department of~~
31 ~~Education within the State of Arkansas where any manufacture or handiwork is~~
32 ~~carried on and which are operated for the primary purpose of providing~~
33 ~~evaluation, training, and gainful employment to disabled individuals of~~
34 ~~Arkansas:~~

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

1 ~~(ii) During such time as employment opportunities~~
2 ~~for them in the competitive labor market do not exist;~~

3 ~~(B) "Disabled individuals" means those persons who have a~~
4 ~~medically or psychiatrically determined physical, mental, or developmental~~
5 ~~disability constituting a substantial vocational handicap;~~

6 ~~(C) "Facilities Section" means that section of the~~
7 ~~Arkansas Rehabilitation Services which exists to maintain an established~~
8 ~~statewide plan for the utilization, construction, expansion, and improvement~~
9 ~~of workshops and rehabilitation facilities in Arkansas;~~

10 ~~(D) "Ordering office" means any state department,~~
11 ~~independent establishment, board, commission, bureau, service, or division of~~
12 ~~state government and any wholly owned state corporation;~~

13 ~~(E) "Fiscal year" means July 1 of one year through June 30~~
14 ~~of the next year;~~

15 ~~(F) "Commodities" means all property, including, but not~~
16 ~~limited to, equipment, printing, stationery, supplies, and insurance, but~~
17 ~~excluding leases on real property, excluding real property or a permanent~~
18 ~~interest in real property;~~

19 ~~(G) "Services" means the furnishing of labor, time, or~~
20 ~~effort by a contractor, not involving the delivery of a specific end product~~
21 ~~other than reports which are merely incidental to the required performance.~~
22 ~~This term shall not include employment agreements, collective bargaining~~
23 ~~agreements, or architectural or engineering contracts requiring approval of~~
24 ~~State Building Services;~~

25 ~~(H) "Products", for purposes of this subchapter, means~~
26 ~~commodities or services.~~

27 ~~(2) Policy. All state departments and agencies electing to~~
28 ~~participate are required to purchase their requirements of needed available~~
29 ~~and suitable products and may purchase suitable services from nonprofit-~~
30 ~~making sheltered workshops for disabled individuals unless such commodities~~
31 ~~and services are authorized by prior legislation for production in another~~
32 ~~state agency, department, or institution.~~

33 ~~(3) Responsibilities of the Committee. It is the responsibility~~
34 ~~of the committee to determine which commodities and services are suitable for~~
35 ~~sale under the program, the fair market price of suitable commodities,~~
36 ~~including revisions as appropriate, from time to time, and the applicable~~

1 purchase procedures. The committee shall also make rules and regulations
2 regarding specifications, delivery, authorization of a central nonprofit-
3 making agency to facilitate distribution of orders among workshops, and such
4 other relevant matters that may be necessary.

5 (4) Schedules of Workshop-Made Products and Services. The
6 committee shall issue to the ordering office through the Office of State
7 Purchasing a schedule of workshop-made commodities and services and the
8 conditions under which they are to be procured from the workshops. The
9 schedule shall include the item or service description, specification
10 identification, price, and other pertinent information.

11 (5) Responsibilities of the Arkansas Rehabilitation Services,
12 Facilities Section.

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

17 (B) The Facilities Section shall undertake the following
18 functions and responsibilities:

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

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

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

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

33 (v) Entering into contracts with state government
34 for the furnishing to a state ordering office of commodities and services
35 offered by workshops.

36 (6) Qualifications and Responsibilities of Workshops.

1 ~~(A) In order to qualify for participation in the program~~
2 ~~as a workshop, an organization shall submit an application to the Facilities~~
3 ~~Section. It shall submit with this application information regarding work~~
4 ~~force, and designating those who are disabled, plant facilities and~~
5 ~~equipment, administrative management, and financial support available to and~~
6 ~~in use by the agency. There should be included a list of the commodities and~~
7 ~~services offered for sale to the state together with a certification as~~
8 ~~provided in subdivision (D) of this subdivision (6). If a corporate body, it~~
9 ~~shall include copies of its articles and bylaws; if an instrumentality of a~~
10 ~~state, it shall submit copies of state laws and related documents showing its~~
11 ~~authority and permitted activities.~~

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

21 ~~(C) Workshops shall:~~

22 ~~(i) Furnish commodities and services in strict~~
23 ~~accordance with the allocation and government order;~~

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

28 ~~(iii) Make available pertinent books and records of~~
29 ~~the agency for inspection at any reasonable time to representatives of the~~
30 ~~committee or the Facilities Section; and~~

31 ~~(iv) Submit to the Facilities Section by September 1~~
32 ~~an annual report for the preceding fiscal year. This report shall include~~
33 ~~data on disabled workers, wages and wage supplements, hours of employment,~~
34 ~~sales, whether the workshop requires a facilities sheltered workshop~~
35 ~~certificate from the United States Department of Labor and special minimum~~
36 ~~rates authorized where such certificate is held, and such other relevant~~

1 information as may be required by the committee or the Facilities Section.

2 (D) ~~A workshop shall not be qualified to furnish a~~
3 commodity or service for sale to the government until the Facilities Section
4 has ascertained that the workshop has adequate capability to manufacture the
5 commodity or deliver the service.

6 (7) ~~Price Determination.~~

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

17 (B) ~~Unless otherwise provided by the committee in the~~
18 ~~notice of price changes, prices in effect on the date of allocation by the~~
19 ~~Facilities Section will apply to the purchase involved. However, in no event~~
20 ~~may a change in price become effective before fifteen (15) days after the~~
21 ~~change is made by the committee.~~

22 (8) ~~Purchase Procedure.~~

23 (A) ~~Where a commodity or service is identified in the~~
24 ~~schedule of workshop made commodities and services as being available through~~
25 ~~the Office of State Purchasing, it shall be obtained in accordance with the~~
26 ~~requisitioning procedures of the supplying agency.~~

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

1 ~~(C) Upon receipt of an allocation, the ordering office~~
2 ~~shall promptly furnish a suitable order to the Facilities Section or the~~
3 ~~workshops as directed by the Facilities Section. Where this cannot be done~~
4 ~~promptly, the ordering office shall so advise the Facilities Section and the~~
5 ~~workshop. A government order should allow lead time sufficient for purchase~~
6 ~~of raw materials, production, and delivery. Where it does not, the Facilities~~
7 ~~Section or the workshop, depending on which agency received the order, may~~
8 ~~request an extension of the delivery date, which should be granted if~~
9 ~~feasible. Where it is not feasible, the ordering office shall notify the~~
10 ~~Facilities Section or the workshop, as appropriate, and request the~~
11 ~~Facilities Section to reallocate or to issue a purchase exception for~~
12 ~~purchase from a commercial source as provided for in subdivision (9) of this~~
13 ~~section. A copy of each order issued to a workshop shall be sent to the~~
14 ~~Facilities Section.~~

15 ~~(D) Workshop made commodities and services may be ordered~~
16 ~~without requesting an allocation for each order providing prior arrangements~~
17 ~~have been made with the Facilities Section for sending orders for specified~~
18 ~~items to designated workshops. Copies of those orders shall be submitted to~~
19 ~~the Facilities Section by the aforementioned ordering office.~~

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

24 ~~(F) If an ordering office desires packing, packaging, or~~
25 ~~marking of products other than as provided in the schedule of workshop made~~
26 ~~commodities and services, the difference in cost thereof, if any, shall be~~
27 ~~charged to the account of the ordering office.~~

28 ~~(9) Purchase Exceptions. An ordering office may purchase from a~~
29 ~~nonworkshop source commodities or services listed in the schedule of~~
30 ~~workshop made commodities and services in any of the following circumstances:~~

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

33 ~~(B) When the Facilities Section has notified the ordering~~
34 ~~office that commodities and services listed in the request for allocation~~
35 ~~cannot be furnished within the period specified. In such cases, purchase~~
36 ~~action must be taken within fifteen (15) days of receipt of notice from the~~

1 ~~Facilities Section or as may be further extended by the Facilities Section;~~

2 ~~(C) When commodities listed on the schedule of workshop-~~
3 ~~made commodities can be purchased from a nonworkshop source by the agency for~~
4 ~~a price at least five percent (5%) lower than workshop-made commodities~~
5 ~~included in the schedule. If any agency proposes to purchase commodities on~~
6 ~~the schedule from a commercial source at a price five percent (5%) or more~~
7 ~~lower than the price of the workshop-made product, the agency shall so advise~~
8 ~~the committee and offer the committee an opportunity to reduce the price of~~
9 ~~the workshop-made commodities to within five percent (5%) of the price of the~~
10 ~~products when purchased from a commercial source;~~

11 ~~(D) Services offered by any workshop may be procured by~~
12 ~~any agency in accordance with § 19-11-503(b), provided that the procuring~~
13 ~~agency may purchase the services from any workshop submitting a price not~~
14 ~~more than five percent (5%) above the lowest price submitted from a~~
15 ~~nonworkshop source.~~

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

21 ~~(11) Adjustment and Cancellation of Orders. Where the Facilities~~
22 ~~Section or a workshop fails to comply with the terms of a government order,~~
23 ~~the ordering office shall make every effort to negotiate an adjustment before~~
24 ~~taking action to cancel the order. Where a government order is cancelled for~~
25 ~~failure to comply with its terms, the Facilities Section shall be notified~~
26 ~~and, if practicable, requested to reallocate the order.~~

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

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/s/ Salmon

APPROVED: 4/17/2001