

HOUSE BILL 1569

By Brooks K

AN ACT to amend Tennessee Code Annotated, Title 71,  
Chapter 4, Part 7, relative to the purchase of  
goods and services from persons with disabilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 71-4-702, is amended by deleting the section in its entirety and by substituting instead the following:

As used in this part, unless the context otherwise requires:

(1) "Blind" means an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle no greater than twenty degrees (20°);

(2) "Central nonprofit agency" means the agency designated by the committee to facilitate the distribution, by direct allocation, subcontract or any other means, of orders from state government for commodities and services on the procurement list among the work centers for the blind, agencies serving individuals with severe disabilities, and other entities, and to assist the committee in administering the program described under this part;

(3) "Certified commodities or services" means:

(A) The commodities produced with "value added" through manufacturing, repackaging or assembly processes;

(B) The services provided with "value added"; and

(C) Commodities and services that have been recommended by the central nonprofit agency as suitable for procurement by any entity of state government pursuant to this part and that are certified pursuant to procedures approved by the state procurement commission as to quality, availability and fair market price;

(4) "Committee" means the advisory committee for purchase from the blind and other severely disabled, created by § 71-4-703;

(5) "Individuals with severe disabilities" means an individual or class of individuals with a physical or mental disability other than blindness, which, according to criteria established by rules approved by the committee for purchase from the blind and other severely disabled, after consultation with appropriate entities of the state and taking into account the views of nongovernmental entities representing the disabled, constitutes a substantial impediment to employment and is of such a nature to prevent the individual with such a disability from currently engaging in regular competitive employment;

(6) "Integrated settings" means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(7) "Other entities" mean entities other than work centers for the blind and agencies serving individuals with severe disabilities that:

(A) Comply with all laws including any applicable occupational safety and health standard prescribed by the secretary of labor of the United States;

(B) In the production of commodities and in the provision of services pursuant to this part, during the fiscal year utilize blind or other individuals with severe disabilities for a minimum of fifty-one percent (51%) of the man-hours of

direct labor required for the production or provision of the commodities or services; and

(C) Work with agencies serving individuals with severe disabilities to identify blind or other individuals with severe disabilities for the man-hours of direct labor required for the production or provision of the commodities or services, and to provide supports necessary for their safe, productive and integrated employment;

(8) “Qualified agency serving individuals with severe disabilities”, referred to as “agency serving individuals with severe disabilities” in this part, means an agency that:

(A) Is organized under the laws of the United States or of this state and operated in the interest of individuals with severe disabilities who are not blind;

(B) Complies with all laws including any applicable occupational safety and health standard prescribed by the secretary of labor of the United States;

(C) In the production of commodities and in the provision of services pursuant to this part, during the fiscal year employs blind or other individuals with severe disabilities for a minimum of fifty-one percent (51%) of the man-hours of direct labor required for the production or provision of the commodities or services; and

(9) “Qualified nonprofit work center for the blind”, referred to as “work center for the blind” in this part, means an agency that:

(A) Is organized under the laws of the state, operated in the interest of blind individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(B) Complies with the applicable occupational health and safety standards prescribed by the secretary of labor of the United States;

(C) In the production of commodities and the provision of services, whether or not the commodities or services are procured as provided in this part, during the fiscal year employs blind individuals for a minimum of seventy-five percent (75%), or in accordance with the percentage of direct labor required under the terms and conditions of the Javits-Wagoner-O'Day Act, P.L. 92-28, compiled in 41 U.S.C. § 46 et seq., or whichever is lesser, of the man-hours of direct labor required for the production or provision of commodities or services; and

(D) Meets the criteria for determining nonprofit status under title 48, chapter 51, part 1, and is registered in good standing with the office of the secretary of state.

SECTION 2. Tennessee Code Annotated, Section 71-4-703, is amended by deleting subsections (b), (c) and (d) in their entireties and by substituting instead the following:

(b) The committee shall provide oversight to the central nonprofit agency in developing and implementing a state procurement program of selected commodities and services from qualified work centers serving blind individuals, agencies serving individuals with severe disabilities, and other entities; shall have authority to select a central nonprofit agency to implement the procurement program; and shall recommend fair market price for commodities and services submitted to the procurement commission for certification pursuant to procedures approved by the procurement commission.

(c) It is the committee's responsibility to:

(1) Designate a central nonprofit agency to facilitate the distribution, among the work centers for the blind, agencies serving individuals with severe disabilities, and other entities, of orders of the government for commodities or

services appearing on the procurement list, by direct allocation, subcontract or any other means;

(2) Review those rules and regulations that will be proposed by the central nonprofit agency and to promulgate such rules that will effectively implement this part;

(3) Conduct an annual evaluation of the activities of the central nonprofit agency under this part for the purpose of assuring effective and efficient administration of this part; and

(4) Evaluate pricing proposed by the central nonprofit agency to determine fair market price, which recovers the cost projected to produce or provide such commodities or services.

(d) All departments, institutions, agencies, and political subdivisions of this state supported in whole or in part by the general assembly shall purchase all services or commodities required by such departments, institutions, agencies or political subdivisions of this state from the central nonprofit agency; provided, that the articles or services are certified pursuant to procedures approved by the procurement commission and are available. This part has precedence over any law requiring state agency procurement of commodities or services, except laws that require purchases from nonprofit organizations operating under §§ 71-4-204 and 71-4-205, laws establishing preference for blind vendors operating under chapter 4, part 5 of this title, and laws requiring purchases under §§ 41-22-118--41-22-124.

SECTION 3. Tennessee Code Annotated, Section 71-4-704, is amended by deleting the section in its entirety and by substituting instead the following:

(a) Under § 71-4-703, the state, through the committee, may designate a central nonprofit agency.

(b) The functions and operations of the designated central nonprofit agency shall include, but not be limited to, the following:

(1) Submit proposed rules and regulations necessary to implement this part. Such rules are to be submitted to, and approved by, the committee prior to promulgation;

(2) Ensure that the priorities for the production of commodities and services are maintained under this part and that individuals with severe disabilities are placed in integrated settings;

(3) Evaluate the qualifications and capabilities of the work centers for the blind, agencies serving individuals with severe disabilities, and other entities, to manufacture commodities or perform services and represent them to the committee under this part. In evaluating products, the central nonprofit agency must assure that the work centers for the blind, agencies serving individuals with severe disabilities, and other entities are contributing a "value added" to commodities or services that are being recommended under this program;

(4) Recommend pursuant to procedures approved by the procurement commission, with appropriate justification, including recommended prices, suitable commodities or services for procurement from the work centers for the blind, agencies serving individuals with severe disabilities, and other entities and as market conditions change, recommend price changes or revisions or the reassignment of commodities and services to and from the certified products list;

(5) Distribute and allocate, by direct allocation, subcontract or any other means, orders from governmental entities. The central nonprofit agency shall give a preference to work centers for the blind and agencies serving individuals

with severe disabilities over other entities when initiating contracts to fulfill orders from government entities and when replacing the entity fulfilling the orders;

(6) Contract with agencies serving individuals with severe disabilities to work with other entities to identify blind or other individuals with severe disabilities for the man-hours of direct labor required for the production or provision of the commodities or services, and to provide supports necessary for their safe, productive and integrated employment. Other entities shall pay a fee to cover the cost of the services provided by the agencies serving individuals with severe disabilities and may factor this fee as an administrative expense into its overall cost;

(7) Maintain the necessary records and monitor data on the work centers for the blind, agencies serving individuals with severe disabilities, and other entities to ensure compliance in the production of a commodity or performance of a service;

(8) When authorized by the committee, enter into contracts with the state procurement system for the furnishing of commodities or services provided by the work centers for the blind, agencies serving individuals with severe disabilities, and other entities; and

(9) When distributing and allocating orders for commodities, priority shall be given to participating nonprofit work centers for the blind.

(c) The central nonprofit agency shall charge a fee to participating work centers for the blind, agencies serving individuals with severe disabilities, and other entities for facilitating participation by their work centers under this part. This fee shall not exceed rates approved by the committee. The work centers for the blind, agencies serving

individuals with severe disabilities, and other entities may factor this fee as an administrative expense into its overall cost.

SECTION 4. Tennessee Code Annotated, Section 71-4-705(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

(b) The committee shall annually report, on or before December 31, to the governor and to each member of the general assembly concerning the number of work centers for the blind, agencies serving individuals with severe disabilities, and other entities participating in the program, the total dollar amount of purchases made from the participating work centers for the blind, agencies serving individuals with severe disabilities, and other entities by state agencies, and any other information the committee deems appropriate.

SECTION 5. This act shall take effect July 1, 2014, the public welfare requiring it.