

AN ACT

RELATING TO PERSONS WITH DISABILITIES; CREATING THE STATE USE ACT; ESTABLISHING THE NEW MEXICO COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES; PROVIDING A RULEMAKING PROCESS TO IDENTIFY SERVICES TO BE PURCHASED FROM COMMUNITY REHABILITATION PROGRAMS OR QUALIFYING INDIVIDUALS WITH DISABILITIES AT FAIR MARKET PRICES BY STATE AGENCIES AND LOCAL PUBLIC BODIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "State Use Act".

Section 2. PURPOSE.--The purpose of the State Use Act is to encourage and assist persons with disabilities to achieve maximum personal independence through useful and productive employment by ensuring an expanded and constant market for services delivered by persons with disabilities, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and entitlements.

Section 3. DEFINITIONS.--As used in the State Use Act:

A. "central nonprofit agency" means a nonprofit agency approved pursuant to rules of the council to facilitate the equitable distribution of orders for the services of:

- (1) qualified individuals; and

(2) community rehabilitation programs;

B. "community rehabilitation program" means a nonprofit entity:

(1) that is organized under the laws of the United States or this state, operated in the interest of persons with disabilities and operated so that no part of the income of which inures to the benefit of any shareholder or other person;

(2) that complies with applicable occupational health and safety standards as required by federal or state law; and

(3) that, in the provision of services, whether or not procured under the State Use Act, employs during the state fiscal year at least seventy-five percent persons with disabilities in direct labor for the provision of services;

C. "council" means the New Mexico council for purchasing from persons with disabilities;

D. "direct labor" means all work directly relating to the provision of services, but not work required for or relating to supervision, administration or inspection;

E. "local public body" means a political subdivision of the state and the political subdivision's agencies, instrumentalities and institutions;

F. "persons with disabilities" means persons who

have a mental or physical impairment that constitutes or results in a substantial impediment to employment as defined by the federal Rehabilitation Act of 1973;

G. "qualified individual" means a person with a disability who is a business owner, or a business that is primarily owned and operated by persons with disabilities that employs at least seventy-five percent persons with disabilities in the provision of direct labor, which has been approved by the council to provide services to state agencies and local public bodies. A person who is receiving services pursuant to an individualized plan of employment from the vocational rehabilitation division of the public education department or from the commission for the blind shall be presumed to be a person with disability, as shall a person who is receiving supplemental security income or social security benefits based on disability;

H. "state agency" means a department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of government of this state; and

I. "state purchasing agent" means the director of the purchasing division of the general services department.

Section 4. COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES--APPOINTMENT--ORGANIZATION.--

A. The "New Mexico council for purchasing from persons with disabilities" is created. The council shall be composed of the following nine members:

(1) the state purchasing agent or the agent's designee;

(2) two persons, appointed by the governor, who represent state agencies that purchase significant amounts of goods and services from the private sector, or their designees;

(3) a person, appointed by the governor, who is a state-employed vocational rehabilitation counselor and who is familiar with employment needs of persons with disabilities and with current pricing and marketing of goods and services; and

(4) two persons with disabilities, a person who is familiar with employment needs of persons with disabilities and with current pricing and marketing of goods and services and two persons who represent community rehabilitation programs that provide employment services to persons with disabilities, all selected by mutual agreement of the persons appointed in Paragraphs (1), (2) and (3) of this subsection.

B. Council members shall be appointed for three-year terms. Vacancies shall be filled in the same manner as for original appointments. A member appointed to fill a

vacancy shall serve for the remainder of the term for that vacancy. Council members shall continue to serve beyond the expiration of their terms until new members are appointed.

C. The council shall elect a chair from among its members. Seven members of the council shall constitute a quorum in order to conduct the council's business.

D. Except for the regular pay of public employee members, council members shall serve without compensation or cost reimbursement.

Section 5. AUTHORITY AND DUTIES OF THE COUNCIL--
RULES.--

A. The council shall adopt rules in accordance with the procedure set out in Subsection E of Section 9-1-5 NMSA 1978 that:

(1) determine which services provided by persons with disabilities are suitable for sale to state agencies and local public bodies;

(2) establish, maintain and publish a list of all the services identified in Paragraph (1) of this subsection. The council shall periodically review and revise this list as products or services are added or removed. The council shall make the list available to all purchasing officials of state agencies and local public bodies;

(3) verify the fair market prices of the services identified in Paragraph (1) of this subsection and

periodically revise the fair market prices in accordance with changing market conditions to ensure that services offer the best value for state agencies and local public bodies. In verifying the fair market value of services, the council shall consider amounts being paid for similar services purchased by the federal government, the state and local public bodies and by private businesses, and the actual cost of performing the services at a community rehabilitation program, taking into consideration the benefits associated with employing persons with disabilities;

(4) establish a procedure to certify eligible community rehabilitation programs and qualified individuals that have services suitable for procurement by state agencies and local public bodies that will be placed on the list established in Paragraph (2) of this subsection;

(5) establish a procedure for approval of a central nonprofit agency that shall hold contracts, facilitate the equitable distribution of orders for services to be procured by state agencies and local public bodies and market approved services to state agencies and local public bodies;

(6) establish procedures for the operation of the approved central nonprofit agency, including a fee structure for its services;

(7) address any other matter necessary to the proper administration of the State Use Act; and

(8) ensure that the work provides opportunities for integration with nondisabled persons, fair pay and adds value to the service provided.

B. The council shall, not later than one hundred eighty days following the close of each fiscal year, submit to the governor, the legislature and each community rehabilitation program a report that includes the names of the council members serving during the preceding fiscal year, the dates of council meetings during that year and any recommendations for changes to the State Use Act.

Section 6. EXISTING VENDOR EXCLUSION.--Services provided pursuant to and facilities covered by Section 22-14-27 NMSA 1978 are excluded from the State Use Act.

Section 7. PROCUREMENT BY STATE AGENCIES AND LOCAL PUBLIC BODIES--COOPERATIVE AGREEMENTS.--

A. A state agency or local public body intending to procure a service on a list published by the council shall, in accordance with rules of the council, procure the service at the price established by the council if the service is available within the period required by the state agency or local public body. Procurement pursuant to the State Use Act is exempt from the provisions of the Procurement Code.

B. The council and a state agency or local public body may enter into a cooperative agreement for effective coordination of the objectives of the State Use Act and any

other law requiring procurement of services from a state agency or local public body.

Section 8. Section 13-1-98 NMSA 1978 (being Laws 1984, Chapter 65, Section 71, as amended) is amended to read:

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The provisions of the Procurement Code shall not apply to:

A. procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

B. procurement of tangible personal property or services for the governor's mansion and grounds;

C. printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;

D. purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;

E. purchases of books and periodicals from the publishers or copyright holders thereof;

F. travel or shipping by common carrier or by private conveyance or to meals and lodging;

G. purchase of livestock at auction rings or to

the procurement of animals to be used for research and experimentation or exhibit;

H. contracts with businesses for public school transportation services;

I. procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to rules adopted by the corrections commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;

J. minor purchases not exceeding five thousand dollars (\$5,000) consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required;

K. municipalities having adopted home rule charters and having enacted their own purchasing ordinances;

L. the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;

M. contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;

N. contracts for maintenance of grounds and facilities at highway rest stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;

O. contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;

P. contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

Q. contracts with professional entertainers;

R. contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;

S. contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in county improvement districts pursuant to Subsection L of Section 4-55A-12.1 NMSA 1978;

T. works of art for museums or for display in public buildings or places;

U. contracts entered into by a local public body with a person, firm, organization, corporation or association or a state educational institution named in Article 12, Section 11 of the constitution of New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978, lease or operation of a county hospital pursuant to the Hospital Funding Act or operation and maintenance of a hospital pursuant to the Special Hospital District Act;

V. purchases of advertising in all media, including radio, television, print and electronic;

W. purchases of promotional goods intended for resale by the tourism department;

X. procurement by or through the public education department from the federal department of education relating to parent training and information centers designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the exemption applies only to procurement of services not to exceed two hundred thousand dollars (\$200,000);

Y. procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act; and

Z. purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973." _____