

An Act

ENROLLED SENATE
BILL NO. 1567

By: Rosino and Stephens of the
Senate

and

Bush of the House

An Act relating to state use; amending 74 O.S. 2021, Section 3001, which relates to the State Use Committee; providing entity name; modifying member of Council; requiring certain meetings; directing the State Purchasing Director to administer the State Use Program; providing certain authority and responsibilities; amending 74 O.S. 2021, Section 3003, which relates to definitions; modifying certain definitions; amending 74 O.S. 2021, Section 3004, which relates to procurement schedules; modifying entity responsible for procurement schedule; directing State Purchasing Director to award and manage contracts to certain organizations; amending 74 O.S. 2021, Section 3004.1, which relates to contracts; authorizing certain contracts or awards; directing deposit of certain fee; modifying allowing expenditures; amending 74 O.S. 2021, Section 3004.2, which relates to the State Use Committee Revolving Fund; allowing certain fee or levy; amending 74 O.S. 2021, Section 3005, which relates to fair market pricing; modifying entity responsible for determining fair market price of certain products and services; modifying time period for price changes to be effective; amending 74 O.S. 2021, Section 3006, which relates to distribution agency; allowing the State Purchasing Director to contract with a third party for certain operations and distribution; amending 74 O.S. 2021, Section 3007, which relates to procuring a product or service at a certain price; modifying procurement source; modifying entity responsible for determining fair market price; modifying procurement requirements; removing certain exemption; authorizing

municipalities and counties to make certain purchases from qualified organizations; amending 74 O.S. 2021, Section 3008, which relates to exceptions; removing exemption; requiring certain pricing review; allowing for temporary exception under certain circumstances; amending 74 O.S. 2021, Section 3009, which relates to annual reporting; allowing Central Purchasing Division to prescribe rules to carry out this act; requiring certain report; repealing 74 O.S. 2021, Section 3010, which relates to exemptions; providing for codification; and providing an effective date.

SUBJECT: State use

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 74 O.S. 2021, Section 3001, is amended to read as follows:

Section 3001. A. There is hereby created in the Office of Management and Enterprise Services ~~a committee~~ an advisory council to be known as the "State Use ~~Committee~~ Advisory Council". The ~~Committee Council~~ shall consist of seven (7) members ~~and one nonvoting member~~ as follows:

1. A private citizen conversant with the employment needs of people with ~~severe~~ significant disabilities who shall be appointed by and serve at the pleasure of the Governor to act as an advocate for the employment needs of people with ~~severe~~ significant disabilities;

2. The Director of the Office of Management and Enterprise Services or designee;

3. The Director of the ~~Division of Services for the Blind and Visually Impaired~~ of the State Department of Rehabilitation Services, or designee;

4. ~~The past president of Oklahoma Community-Based Providers or designee to serve for a one-year period, who may be reappointed by~~

~~the succeeding president~~ One member who shall be a state use provider who shall be appointed by the President Pro Tempore of the Senate;

5. An individual or a parent or guardian of an individual with ~~severe~~ significant disabilities who participates in vocational programming through a ~~sheltered environment facility~~ qualified nonprofit agency for individuals with disabilities, to be ~~selected by the Committee~~ appointed by the Speaker of the House of Representatives;

6. The Director of Human Services, or designee; and

~~7. A certified procurement officer from any state agency appointed by the State Purchasing Director, selected to represent the customer agencies of the State of Oklahoma; and~~

~~8. As a nonvoting member, a A person employed by the Office of Management and Enterprise Services Central Purchasing Division as a contracting officer in the purchasing division, appointed by the State Purchasing Director with the advice of the Committee and designated specifically to solicit, develop, and negotiate contracts with agencies and individuals.~~

~~B. The Committee shall elect from among its membership a Chair and a Vice Chair who shall both serve for a period of one (1) year.~~

~~C. The private citizen citizens on the Committee Council shall serve for a period of two (2) years and may be reappointed by the appointing authority. Any private citizen appointed pursuant to this section to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of the term.~~

~~D. Any member of the Committee shall be prohibited from voting on any issue in which the member has an interest~~ The State Use Advisory Council shall meet a minimum of twice a year for the purpose of exchanging ideas to market and improve the State Use Program.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3001.1 of Title 74, unless there is created a duplication in numbering, reads as follows:

The State Purchasing Director, under the supervision of the Director of the Office of Management and Enterprise Services, shall have authority and responsibility to administer and oversee the State Use Program including but not limited to:

1. Promulgating rules relating to the program;
2. Qualification of organizations participating in the program;
3. Contracting with qualified organizations for products and services to be included on the procurement schedule;
4. Determination of fair market price of all products and services to be included on the procurement schedule; and
5. Designation and publication of a procurement schedule.

SECTION 3. AMENDATORY 74 O.S. 2021, Section 3003, is amended to read as follows:

Section 3003. As used in ~~this act~~ Section 3001 et seq. of this title:

1. "Blind person" means a person having a visual acuity not to exceed 20/200 in the better eye, with correcting lenses, or visual acuity greater than 20/200 but with limitation in the field of vision such that the widest diameter of visual field subtends an angle no greater than twenty (20) degrees;

2. "~~Committee~~ Council" means the State Use ~~Committee~~ Advisory Council;

3. "Qualified nonprofit agency for the severely handicapped employment of people with significant disabilities" means a nonprofit agency:

- a. ~~employing severely disabled persons~~ with significant disabilities who constitute at least seventy-five

percent (75%) of the ~~personnel~~ direct labor hours engaged in direct production, manufacturing, processing and/or assembling of products or services offered by the agency for procurement by this state ~~and~~ or who meet the definition of ~~"blind person"~~ blind person as provided for in paragraph 1 of this section, or

~~b.~~ which is certified as a sheltered workshop by the Wage and Hour Division of the United States Department of Labor;

4. ~~"Severely disabled person"~~ "Person with significant disabilities" means an individual with a physical or mental disability constituting a substantial handicap to employment and preventing the person from engaging in normal competitive employment and/or includes any blind person;

5. "Qualified organization" means a blind person, ~~or~~ qualified nonprofit agency for the severely handicapped, or severely disabled person employment of people with significant disabilities contracting to supply goods or services;

6. "Manufactured" means goods made by manual labor;

7. "Produced" means to have brought into existence or created from raw materials;

8. "Processed" means the action of taking something through an established and mostly routine set of procedures or steps to substantially convert a potential product from one form to another. This action involves a sequence of multiple steps each requiring a distinct decision-making process to evolve a potential product to the next step; ~~and~~

9. "Assemble" means to put or fit together or put together the parts of a potential product;

10. "Central nonprofit agency (CNA)" means a qualified 501(c)3 nonprofit entity meeting the qualifications in the Request for Procurement (RFP) issued by the Office of Management and Enterprise

Services selected to administer and oversee the State Use Program;
and

11. "Procurement schedule" means a designated schedule of products and services currently approved by the Office of Management and Enterprise Services Central Purchasing Division as suitable to procure from qualified organizations participating in the State Use Program.

SECTION 4. AMENDATORY 74 O.S. 2021, Section 3004, is amended to read as follows:

Section 3004. ~~The Committee~~ Office of Management and Enterprise Services Central Purchasing Division shall designate and distribute by regulation a schedule, hereinafter referred to as the procurement schedule, of the products directly manufactured, produced, processed or assembled or services directly performed, offered or provided by any ~~severely disabled~~ person with significant disabilities or qualified nonprofit agency for the ~~severely disabled~~ employment of people with significant disabilities, as defined by ~~this act in~~ Section 3003 of this title, which the ~~Committee~~ State Purchasing Director determines are suitable for procurement by the state. ~~No state agency shall purchase, pursuant to Section 3007 of this title, products or services purporting to be made by severely disabled persons in workshops which are not certified by the Committee or by severely disabled individuals who are not certified by the Committee~~ The products and services on contract will be published on the procurement schedule and will be designated as mandatory. The Office of Management and Enterprise Services Central Purchasing Division shall have the authority to qualify organizations for inclusion in the State Use Program, monitor qualified organizations for continued compliance to remain active in the program, and remove organizations from the program. Central Purchasing shall have the authority to award and manage contracts to the qualified organizations as well as to renegotiate or cancel contracts when appropriate.

SECTION 5. AMENDATORY 74 O.S. 2021, Section 3004.1, is amended to read as follows:

Section 3004.1 ~~A one percent fee of any contract for products or services of the severely disabled shall be assessed against the~~

~~qualified organization and~~ The State Purchasing Director may enter or award contracts for products or services to a qualified organization as defined in Section 3003 of this title and assess a contract management fee or levy. The contract management fee or levy shall be deposited in the State Use ~~Committee~~ Advisory Council Revolving Fund, as created in Section 3004.2 of this title, for the salary, administrative costs, annual trainings, professional association memberships, qualified agency operational improvement grants, periodic economic advantage study, Annual Report development, and other expenses incurred by the Central Purchasing Division of the Office of Management and Enterprise Services for promoting goods and services provided by qualified organizations.

SECTION 6. AMENDATORY 74 O.S. 2021, Section 3004.2, is amended to read as follows:

Section 3004.2 There is hereby created in the State Treasury a revolving fund for the Office of Management and Enterprise Services to be designated the "State Use ~~Committee~~ Advisory Council Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all proceeds from the ~~one-percent~~ management fee or levy on contracts for purchases of products or services of ~~the severely disabled people with significant disabilities,~~ as provided in Section 3004.1 of this title. The fund shall be invested in any of the types of instruments in which the State Treasurer is authorized by law to invest. Interest earned shall be retained by the fund. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Office of Management and Enterprise Services for the salary and other administrative expenses of the buyer and clerical and technical support in the Central Purchasing Division of the Office of Management and Enterprise Services responsible for contracts for the products and services of ~~the severely disabled people with significant disabilities~~ and expenses the Office incurs to support Committee State Use operations including services of the Centralized Non-Profit Agency (CNA). Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

SECTION 7. AMENDATORY 74 O.S. 2021, Section 3005, is amended to read as follows:

Section 3005. The ~~Committee~~ Office of Management and Enterprise Services Central Purchasing Division shall determine the fair market price of all products and services included in the procurement schedule and shall revise such prices in accordance with changing market conditions; provided, however, a change in price shall not be effective prior to the expiration of ~~fifteen (15)~~ thirty (30) days from the date on which such change is ~~made by the Committee~~ approved. Approved fair market prices shall be reflected on State Use contracts and procurement schedules within thirty (30) days of approval and distribution.

SECTION 8. AMENDATORY 74 O.S. 2021, Section 3006, is amended to read as follows:

Section 3006. The ~~Committee~~ State Purchasing Director may ~~designate contract with~~ a central nonprofit agency to facilitate:

1. Management of the day-to-day operations of the program;
2. The facilitation, promotion, and the distribution of orders of the state for products or services on the procurement schedule among qualified nonprofit agencies for people with ~~severe~~ significant disabilities;
3. Scheduling and conducting annual training sessions;
4. Publishing the approved State Use Procurement Schedule;
5. Promotion of the State Use Program through development and distribution of program marketing material, promotion of program through continued contact with current and future customers; and
6. All other duties assigned by the RFP through the Office of Management and Enterprise Services.

SECTION 9. AMENDATORY 74 O.S. 2021, Section 3007, is amended to read as follows:

Section 3007. A. ~~Whenever the State of Oklahoma~~ this state or any of its agencies intends to procure any product or service included in the procurement schedule, that entity shall secure the product or service from a qualified nonprofit agency providing employment to people with ~~severe~~ significant disabilities at the fair market price determined by the ~~Committee~~ Office of Management and Enterprise Services Central Purchasing Division, if the product or service is available within the period required by the entity and meets the specifications of the entity.

B. An agency of this state shall not evade the intent and meaning of this section by slight variations from standards adopted by the Office of Management and Enterprise Services Central Purchasing Division.

C. Provided, the requirements of this section shall not apply to the procurement of janitorial services by the Oklahoma State Bureau of Investigation. The Bureau shall conduct background investigations and national criminal history record checks on companies and individuals with which it contracts to provide janitorial services.

D. ~~When the fair market price for a product or service approved by the Committee exceeds a current market price for the same product or service, and such lower market price has been verified by the agency through compliance with the fair market analysis process approved by the Office of Management and Enterprise Services, the state use contracting officer may grant a temporary exception to a requesting agency so that the agency may purchase the product or service from the vendor offering the lower market price. The temporary exception shall automatically expire when a new fair market price is established by the State Use Committee~~ Any municipality or county agency of this state is authorized to purchase products and services from any qualified organization as defined in Section 3003 of this title. The qualified organization shall be able to meet the needs and specifications for the products or services required by the purchasing body at the fair market price. Procurements made pursuant to the provisions of this section shall not be subject to competitive bid requirements.

SECTION 10. AMENDATORY 74 O.S. 2021, Section 3008, is amended to read as follows:

Section 3008. A. Nothing in ~~Sections~~ Section 3001 et seq. of this title pursuant to purchases of products and services from people with ~~severe~~ significant disabilities shall be construed to prohibit any department or agency of the state from manufacturing or supplying its own products or services for its own use. Procurements made pursuant to ~~this act~~ Section 3001 et seq. of this title shall not be subject to the competitive bid requirements of the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title.

B. The Office of Management and Enterprise Services Central Purchasing Division shall require an annual qualified organization pricing review for all products and services approved and designated on the procurement schedule. The method of the pricing review shall be defined in the promulgated rules.

C. When the fair market price for a product or service approved by the Office of Management and Enterprise Services Central Purchasing Division exceeds a current market price for the same product or service and such lower market price has been verified by the agency through compliance with the fair market analysis process approved by the Office of Management and Enterprise Services Central Purchasing Division, the State Use contracting officer may grant a temporary exception to a requesting agency so that the agency may purchase the product or service from the supplier offering the lower market price.

SECTION 11. AMENDATORY 74 O.S. 2021, Section 3009, is amended to read as follows:

Section 3009. A. The ~~State Use Committee~~ Office of Management and Enterprise Services Central Purchasing Division shall prescribe rules to carry out the purposes of the provisions of Sections 3001 through 3009 of this title.

B. The rules shall include requirements for:

1. Publishing a catalog listing goods and services and jobs that ~~workshops~~ qualified agencies employing people with significant disabilities can provide the state, annually; and

2. Conducting a minimum of ~~six~~ two meetings per year of the State Use Council, in compliance with the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes;

~~3. Making available to contractors the minutes of all meetings;~~

~~4. Notifying contractors at least ten (10) days prior to meeting dates. Meetings shall be called by the Committee Chair; and~~

~~5. Establishing guidelines by which a vendor may file a grievance.~~

~~C. The Committee shall report any violations of the intent of the laws to the Attorney General's office within thirty (30) days of their determination of such violations.~~

~~D. The Committee shall file an Annual Report On an annual basis, the Office of Management and Enterprise Services shall, within sixty (60) days after the close of the legislative fiscal year with, transmit a strategic plan for the State Use Program to the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Governor.~~

SECTION 12. REPEALER 74 O.S. 2021, Section 3010, is hereby repealed.

SECTION 13. This act shall become effective November 1, 2022.

Passed the Senate the 9th day of May, 2022.

Presiding Officer of the Senate

Passed the House of Representatives the 27th day of April, 2022.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____