

1                                   **PURCHASING FROM PEOPLE WITH**  
2                                   **DISABILITIES AMENDMENTS**

3                                   2006 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Sheldon L. Killpack**

6                                   House Sponsor: Rebecca D. Lockhart

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8   **LONG TITLE**

9   **General Description:**

10           This bill modifies the Utah Procurement Code by amending requirements for certain  
11 government agencies for purchasing from persons with disabilities.

12   **Highlighted Provisions:**

13           This bill:

- 14           ▶ provides certain definitions;  
15           ▶ creates the Purchasing from Persons with Disabilities Advisory Board to facilitate a  
16 public procurement unit's procurement of goods and services from community

17 rehabilitation programs by:

- 18           • identifying goods and services currently available from community

19 rehabilitation programs;

- 20           • approving prices for goods and services;

- 21           • developing, maintaining, and approving a preferred procurement contract list;

22 and

- 23           • reviewing, awarding, and renewing bids received by a community rehabilitation  
24 program for specified contracts for the purchase of goods and services;

25           ▶ allows the board to designate a central not-for-profit association, appoint its  
26 members, and establish guidelines for its duties;

- 27           ▶ requires each public procurement unit to purchase goods and services produced by a



28 community rehabilitation program under the preferred procurement contract list approved by  
 29 the board under certain conditions;

- 30       ▶ establishes a \$5 million annual cap in total amount of contracts for the purchase of
- 31 goods and services produced by a community rehabilitation program under the
- 32 preferred procurement contract list; and
- 33       ▶ makes technical changes.

34 **Monies Appropriated in this Bill:**

35       None

36 **Other Special Clauses:**

37       None

38 **Utah Code Sections Affected:**

39 AMENDS:

40       **63-56-425**, as renumbered and amended by Chapter 25, Laws of Utah 2005



42 *Be it enacted by the Legislature of the state of Utah:*

43       Section 1. Section **63-56-425** is amended to read:

44       **63-56-425. Purchase from sheltered workshops.**

45       (1) As used in this section[~~,"sheltered workshop"~~];

46       (a) "Board" means the Purchasing from Persons with Disabilities Advisory Board  
 47 created under this section.

48       (b) "Central not-for-profit association" means a group of experts designated by the  
 49 board to do the following, under guidelines established by the board:

50           (i) assist the board with its functions; and

51           (ii) facilitate the implementation of board policies.

52       (c) (i) "Community rehabilitation program" means a program that is operated primarily  
 53 for the purpose of the employment and training of persons with a disability by a government  
 54 agency or qualified nonprofit organization [operated in the interest of severely disabled  
 55 individuals that:] which is an income tax exempt organization under 26 U.S.C. Sec. 501(c)(3)  
 56 of the Internal Revenue Code.

57           (ii) A community rehabilitation program:

58           (A) maintains an employment ratio of at least 75% of the program employees under the

59 procurement contract in question have severe disabilities;

60 ~~[(a)] (B) (I) [is certified as a sheltered workshop or sheltered work activity center]~~  
61 complies with any applicable occupational health and safety standards prescribed by the United  
62 States Department of Labor; or

63 ~~[(b)] (II)~~ is a supported employment program approved by the Utah State Office of  
64 Rehabilitation ~~[if:];~~

65 ~~[(i) the program has as its principal purpose the development of employment~~  
66 ~~opportunities for individuals with severe disabilities; and]~~

67 ~~[(ii) at least 75% of the program employees under the procurement contract in question~~  
68 ~~have severe disabilities.]~~

69 (C) has its principal place of business in Utah;

70 (D) produces any good provided under this section in Utah; and

71 (E) provides any service that is provided by individuals with a majority of whom  
72 domiciled in Utah.

73 (d) "Person with a disability" means a person with any disability as defined by and  
74 covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

75 (2) (a) There is created the Purchasing from Persons with Disabilities Advisory Board  
76 within the Division of Purchasing and General Services of the Department of Administrative  
77 Services. The board shall be composed of the following three members:

78 (i) the director of the Division of Purchasing and General Services created under  
79 Section 63A-2-101 or a designee;

80 (ii) the executive director of the Utah State Office of Rehabilitation created under  
81 Section 53A-24-103 or a designee; and

82 (iii) a representative of the private business community who shall be appointed to a  
83 three-year term by the governor with the advice and consent of the Senate.

84 (b) The board shall meet, as needed, to facilitate the procurement of goods and services  
85 from community rehabilitation programs by a public procurement unit under this chapter by:

86 (i) identifying goods and services that are available from community rehabilitation  
87 programs according to the requirements under Subsection (4);

88 (ii) approving prices in accordance with Subsection (4)(c) for goods and services that  
89 are identified under Subsection (2)(b)(i);

90 (iii) developing, maintaining, and approving a preferred procurement contract list of  
91 goods and services identified and priced under Subsections (2)(b)(i) and (ii);

92 (iv) reviewing bids received by a community rehabilitation program; and

93 (v) awarding and renewing specified contracts for set contract times, without  
94 competitive bidding, for the purchase of goods and services under Subsection (4).

95 (c) The provisions of Subsections (2)(b) and (4)(a) are an exception to the procurement  
96 provisions under this chapter.

97 (3) (a) The board may designate a central not-for-profit association, appoint its  
98 members, and establish guidelines for its duties.

99 (b) The designated central not-for-profit association serves at the pleasure of the board  
100 and the central not-for-profit association or its individual members may be removed by the  
101 board at any time by a majority vote of the board.

102 (c) Subject to the board guidelines and discretion, a designated central not-for-profit  
103 association may be assigned to perform the following duties:

104 (i) identify qualified community rehabilitation programs and the goods and services  
105 that they provide or have the potential to provide;

106 (ii) help ensure that goods and services are provided at reasonable quality and delivery  
107 levels;

108 (iii) recommend pricing for goods and services;

109 (iv) reviewing bids and recommending the award of contracts under the board's  
110 direction;

111 (v) collecting and reporting program data to the board and to the division; and

112 (vi) other duties specified by the board.

113 ~~[(2)]~~ (4) [Notwithstanding] Except as provided under Subsection (6), notwithstanding  
114 any provision in this chapter to the contrary, each public procurement unit shall purchase goods  
115 and services produced by a [sheltered workshop] community rehabilitation program using the  
116 preferred procurement contract list approved under Subsection (2)(b)(iii) if:

117 (a) the good or service offered for sale by a [sheltered workshop] community  
118 rehabilitation program reasonably conforms to the needs and specifications of the public  
119 procurement unit;

120 (b) the [sheltered workshop] community rehabilitation program can supply the good or

121 service within a reasonable time; and

122 (c) the price of the good or service is reasonably competitive with the cost of procuring

123 the good or service from another source[;].

124 [~~(d) the sheltered workshop has provided the public procurement unit with a written~~

125 ~~bid fairly identifying the good or service and naming its price; and]~~

126 [(e) (i) the sheltered workshop has its principal place of business in Utah;]

127 [(ii) the good was produced by the sheltered workshop in Utah; or]

128 [(iii) the service is provided by individuals, the majority of whom are domiciled in

129 Utah;]

130 [(3) The cost of a good or service is considered reasonably competitive under

131 Subsection (2)(c) if it is within 5% of the lowest responsive and responsible bid offer for that

132 good or service.]

133 [(4)] (5) Each [~~sheltered workshop~~] community rehabilitation program:

134 (a) may submit a bid to the board at any time and not necessarily in response to a

135 request for bids; and

136 (b) shall certify on any bid it submits to the board or to a public procurement unit under

137 this section that it is claiming a preference under this section.

138 (6) During a fiscal year, the requirement for a public procurement unit to purchase

139 goods and services produced by a community rehabilitation program under the preferred

140 procurement list under Subsection (4) does not apply if the Division of Purchasing and General

141 Services determines that the total amount of procurement contracts with community

142 rehabilitation programs has reached \$ → [at least] ← \$ \$5 million for that fiscal year.

143 [(5)] (7) In the case of conflict between a purchase under this section and a purchase

144 under Section 63-56-423, this section prevails.

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### Legislative Review Note

as of 11-22-05 3:15 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel