

HOUSE No. 86

The Commonwealth of Massachusetts

PRESENTED BY:

Sean Garballey

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to promote employment for people with disabilities.

PETITION OF:

NAME:

Sean Garballey

DISTRICT/ADDRESS:

23rd Middlesex

HOUSE No. 86

By Mr. Garballey of Arlington, a petition (accompanied by bill, House, No. 86) of Sean Garballey for legislation to promote employment for people with disabilities. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to promote employment for people with disabilities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1.

2 Short Title.

3 Sections I through 7 of this act may be cited as the "State Use Act to Promote
4 Employment for People with Disabilities".

5 SECTION 2. Purpose.

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

11 SECTION 3. Definitions.

12 A. "central nonprofit agency" means a nonprofit agency approved pursuant to rules of the
13 council

14 to facilitate the equitable distribution of orders for the services of:

15 (1) qualified individuals; and

16 (2) community rehabilitation programs;

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

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

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

23 (3) that, in the provision of services, whether or not procured under the State Use Act,
24 employs during the state fiscal year at least 75% persons with disabilities in direct labor for the
25 provision of services;

26 C. "council" means the Commonwealth of Massachusetts council for purchasing from
27 persons with disabilities;

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

30 E. "local public body" means a political subdivision of the state and the political
31 subdivision's

32 agencies, instrumentalities and institutions;

33 F. "persons with disabilities" means persons who have a mental or physical impairment
34 that constitutes or results in a substantial impediment to employment as deemed by the federal
35 Rehabilitation Act of 1973;

36 G. "qualified individual" means a person with a disability who is a business owner, or a
37 business

38 that is primarily owned and operated by persons with disabilities that employs at least
39 75% persons with disabilities in the provision of direct labor, which has been approved by the
40 council to provide services to state agencies and local public bodies. A person who is receiving
41 services pursuant to an individualized plan of employment from the vocational rehabilitation
42 division of the public education department or from the commission for the blind shall be
43 presumed to be a person with disability, as shall a person who is receiving supplemental security
44 income or social security benefits based on disability;

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

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

50 SECTION 4. Council for purchasing from persons with disabilities; appointment;
51 organization.

52 A. The "Commonwealth of Massachusetts council for purchasing from persons with
53 disabilities" is created. The council shall be composed of the following nine members:

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

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

57 (3) a person, appointed by the governor, who is a state-employed vocational rehabilitation
58 counselor and who is familiar with employment needs of persons with disabilities and with
59 current pricing and marketing of goods and services; and (4) two persons with disabilities, a
60 person who is familiar with employment needs of persons with disabilities and with current
61 pricing and marketing of goods and services and two persons who represent community
62 rehabilitation programs that provide employment services to persons with disabilities, all
63 selected by mutual agreement of the persons appointed in Paragraphs (1), (2) and (3) of this
64 subsection.

65 B. Council members shall be appointed for three-year terms. Vacancies shall be filled in
66 the same manner as for original appointments. A member appointed to fill a vacancy shall serve
67 for the remainder of the term for that vacancy. Council members shall continue to serve beyond
68 the expiration of their terms until new members are appointed.

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

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

73 SECTION 5. Authority and duties of the council; rules.

74 A. The council shall adopt rules in accordance with the procedures that:

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

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

81 (3) verify the fair market prices of the services identified in Paragraph (1) of this
82 subsection and periodically revise the fair market prices in accordance with changing market
83 conditions to ensure that services offer the best value for state agencies and local public bodies.
84 In verifying the fair market value of services, the council shall consider amounts being paid for
85 similar services purchased by the federal government, the state and local public bodies and by
86 private businesses, and the actual cost of performing

87 the services at a community rehabilitation program, taking into consideration the benefits
88 associated with employing persons with disabilities;

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

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

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

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

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

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

107 SECTION 6. Procurement by state agencies and local public bodies; cooperative
108 agreements.

109 A. A state agency or local public body intending to procure a service on a list published
110 by the council shall, in accordance with rules of the council, procure the service at the price
111 established by the council if the service is available within the period required by the state

112 agency or local public body. Procurement pursuant to the State Use Act is exempt from the
113 provisions of the Procurement Code.

114 B. The council and a state agency or local public body may enter into a cooperative
115 agreement for

116 effective coordination of the objectives of the State Use Act and any other law requiring
117 procurement of services from a state agency or local public body.

118 SECTION 7. Supplies manufactured and services performed by persons with disabilities.

119 A. Contracts for supplies manufactured by and services performed by persons with
120 disabilities shall be entered into in accordance with this section without the requirement for
121 competitive bidding. Persons with disabilities must make an appreciable contribution in
122 manufacturing an item or performing a service.

123 B. When the Commonwealth enters into a contract under this section with a cost
124 exceeding \$300,000 per year, the department, in cooperation with the purchasing agency, shall
125 conduct an annual review to confirm compliance with the contract and the requirements of this
126 section. The annual review shall include, but not be limited to, an assessment of all requirements
127 related to appreciable contribution. If the department, in cooperation with the purchasing agency,
128 determines that persons with disabilities are not making an appreciable contribution in the
129 manufacturing of an item or the performance of a service or an agency for persons with
130 disabilities is not in compliance with other requirements of this section, the department shall give
131 an agency for persons with disabilities 45 days in which to remedy the deficiency. If the agency
132 for persons with disabilities fails to remedy the deficiency within 45 days, the agency for persons
133 with disabilities shall be deemed to be in noncompliance with the contract, and the purchasing

134 agency may terminate the contract and seek to procure the item or service through a competitive
135 bidding process. Nothing in this section shall preclude a purchasing agency from procuring an
136 item or service through an emergency contract when an agency for persons with disabilities is
137 deemed to be in noncompliance.