HOUSE DOCKET, NO. 1858 FILED ON: 2/12/2021

# HOUSE . . . . . No. 198

## The Commonwealth of Massachusetts

PRESENTED BY:

***Michael S. Day*, (BY REQUEST)**

*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: | DISTRICT/ADDRESS: | DATE ADDED: |
|---|---|---|
| *Jeffery Calnan* | *100 Wildwood St. Winchester, MA 01890* | *2/12/2021* |

HOUSE DOCKET, NO. 1858 FILED ON: 2/12/2021

# HOUSE . . . . . No. 198

By Mr. Day of Stoneham (by request), a petition (accompanied by bill, House, No. 198) of Jeffery Calnan for legislation to promote employment for people with disabilities. Children, Families and Persons with Disabilities.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *100* OF 2019-2020.]

## The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court**
**(2021-2022)**

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:*

SECTION 1.

Short Title.

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

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.

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 75% persons with disabilities in direct labor for the provision of services;

C. "council" means the Commonwealth of Massachusetts 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 deemed 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 75% 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 "Commonwealth of Massachusetts 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 goodsanp 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 (I), (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 procedures 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. 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 7. Supplies manufactured and services performed by persons with disabilities.

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

B. When the Commonwealth enters into a contract under this section with a cost exceeding $300,000 per year, the department, in cooperation with the purchasing agency, shall conduct an annual review to confirm compliance with the contract and the requirements of this section. The annual review shall include, but not be limited to, an assessment of all requirements related to appreciable contribution. If the department, in cooperation with the purchasing agency, determines that persons with disabilities are not making an appreciable contribution in the manufacturing of an item or the performance of a service or an agency for persons with disabilities is not in compliance with other requirements of this section, the department shall give

an agency for persons with disabilities 45 days in which to remedy the deficiency. If the agency for persons with disabilities fails to remedy the deficiency within 45 days, the agency for persons with disabilities shall be deemed to be in noncompliance with the contract, and the purchasing agency may terminate the contract and seek to procure the item or service through a competitive bidding process. Nothing in this section shall preclude a purchasing agency from procuring an item or service through an emergency contract when an agency for persons with disabilities is deemed to be in noncompliance.