

SECOND REGULAR SESSION

# HOUSE BILL NO. 1661

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES PRATT (Sponsor), LeVOTA AND GRISAMORE (Co-sponsors).

3878L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 34.165, RSMo, and to enact in lieu thereof one new section relating to state purchasing.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 34.165, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 34.165, to read as follows:

34.165. 1. [In making purchases for this state, its governmental agencies or political subdivisions, the commissioner of administration shall give a bidding preference consisting of a ten-point bonus on bids for products and services manufactured, produced or assembled in qualified nonprofit organizations for the blind established pursuant to the provisions of 41 U.S.C. Sections 46 to 48c, as amended and in sheltered workshops holding a certificate of approval from the department of elementary and secondary education pursuant to section 178.920, RSMo, if the participating nonprofit organization provides the greater of two percent or five thousand dollars of the total contract value of bids for purchase not exceeding ten million dollars.

2. An affidavit signed by the director or manager and the board president of a participating nonprofit organization shall be provided to the purchasing agency by the contractor at the completion of the contract or within thirty days of the first anniversary of the contract, whichever first occurs, verifying compliance.

3.] **As used in this section, the following terms shall mean:**

(1) **"Agency", includes any political subdivision of the state having its own purchasing agency, such as a county, municipality, school district, or other public body, that is supported in whole or in part by funds appropriated by the general assembly;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17           (2) "Blind", an individual having central visual acuity of 20/200 or less in the better  
18 eye with correcting glasses or a disqualifying field defect in which the peripheral field has  
19 contracted to such an extent that the widest diameter or visual field subtends an angular  
20 distance no greater than twenty degrees;

21           (3) "Direct labor", includes all work required for preparation, processing, and  
22 packing, but not supervision, administration, inspection, and shipping;

23           (4) "Other severely disabled" or "severely disabled individual", an individual or  
24 class of individuals under a physical or mental disability other than blindness, which,  
25 according to criteria established by the commissioner of administration, after consultation  
26 with appropriate entities of the state and taking into account the views of nongovernmental  
27 entities representing the disabled, constitutes a substantial barrier to employment and is  
28 of such a nature as to prevent the individual under such disability from currently engaging  
29 in normal competitive employment;

30           (5) "Qualified nonprofit agency for the blind", an agency:

31           (a) Organized under the laws of the United States and the state of Missouri  
32 operated in the interest of blind individuals, the net income of which does not inure in  
33 whole or in part to the benefit of any shareholder or other individual;

34           (b) Which complies with any applicable occupational health and safety standard  
35 prescribed by the Secretary of Labor of the United States;

36           (c) Which, in the production of commodities and the provision of services, whether  
37 or not the commodities or services are procured under this section, during the fiscal year  
38 employs blind individuals for not less than seventy-five percent of the person-hours of  
39 direct labor required for the production or provision of the commodities or services; and

40           (d) Which meets the criteria for determining nonprofit status under federal and  
41 state law and is registered and in good standing as a charitable organization with the state  
42 of Missouri;

43           (6) "Qualified nonprofit agency for the severely disabled", an agency:

44           (a) Organized under the laws of the United States and the state of Missouri  
45 operated in the interest of severely disabled individuals, the net income of which does not  
46 inure in whole or in part to the benefit of any shareholder or other individual;

47           (b) Which complies with any applicable occupational health and safety standard  
48 prescribed by the Secretary of Labor of the United States;

49           (c) Which, in the production of commodities and the provision of services, whether  
50 or not the commodities or services are procured under this section, during the fiscal year  
51 employs severely disabled individuals for not less than seventy-five percent of the person-

52 hours of direct labor required for the production or provision of the commodities or  
53 services; and

54 (d) Which meets the criteria for determining nonprofit status under federal and  
55 state law and is registered and in good standing as a charitable organization with the state  
56 of Missouri.

57 2. The commissioner of administration shall determine the fair market price of all  
58 products and services offered for sale to the various agencies of the state by any qualified  
59 nonprofit agency for the blind or other severely disabled. The fair market price shall  
60 recover for the nonprofit agency the cost of raw materials, labor, overhead, and delivery,  
61 and shall be revised from time to time in accordance with changing cost factors.

62 3. The commissioner of administration shall make such rules and regulations regarding  
63 specifications, [quality standards,] time of delivery, [performance] assignment of products and  
64 services to be supplied by nonprofit agencies for the blind or by agencies for the other  
65 severely disabled with priority for assignment of products agencies for the blind,  
66 authorization of a central nonprofit agency to facilitate the allocation of orders among  
67 qualified nonprofit agencies for the blind and other severely disabled, and other relevant  
68 matters of procedure as shall be necessary to carry out the purpose of this section. [No rule or  
69 portion of a rule promulgated pursuant to the authority of this section shall become effective  
70 unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.] The  
71 commissioner of administration shall authorize the purchase of products and services  
72 elsewhere when requisitions cannot reasonably be complied with through the nonprofit  
73 agencies for the blind and other severely disabled.

74 4. [At the request of the commissioner of administration, the state auditor may examine  
75 all records, books and data of any qualified nonprofit organization for the blind to determine the  
76 costs of manufacturing products or rendering services and the manner and efficiency of  
77 production and administration of such nonprofit organization with relation to any product or  
78 services purchased by this state, its governmental agencies or political subdivisions and to  
79 furnish the results of such examination to the commissioner for appropriate action.] The  
80 commissioner of administration shall establish and publish a list of products and services  
81 provided by any qualified nonprofit agency for the blind and any nonprofit agency for the  
82 other severely disabled which the commissioner determines are suitable for procurement  
83 by agencies of the state under this section. Such procurement list and revision thereof shall  
84 be distributed to all purchasing officers of the state and its political subdivisions. All  
85 products offered for purchase to a state agency or political subdivision of this state by a  
86 qualified nonprofit agency shall have significant value added by blind or other severely  
87 disabled persons, as determined by the commissioner.

88           **5. If any agency intends to procure any product or service on the procurement list,**  
89 **such agency shall, in accordance with rules of the commissioner, procure such product or**  
90 **service at the price established by the commissioner from a qualified nonprofit agency for**  
91 **the blind or a qualified nonprofit agency for the other severely disabled if the product or**  
92 **service is available within a reasonable time delivery. This section shall not apply in any**  
93 **case in which products or services are available for procurement from any agency of the**  
94 **state and procurement therefrom is required under any law currently in effect. However,**  
95 **this section shall have precedence over any law requiring state agency procurement of**  
96 **products or services from any other public or private concern unless such precedence is**  
97 **specifically waived by the commissioner in accordance with state regulation. Purchase of**  
98 **commodities or contractual services by any legislative, executive, or judicial agency of the**  
99 **state in accordance with this section are hereby exempt from competitive bidding**  
100 **requirements.**

101           **6. If, under a contract between any legislative, executive, or judicial agency of this**  
102 **state and any private contract vendor, a product or service is required by the commissioner**  
103 **or on behalf of any state agency that is included on the procurement list established by the**  
104 **commissioner under this section, the contract shall contain the following language:**

105           **"IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES**  
106 **THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT**  
107 **SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR A**  
108 **NONPROFIT AGENCY FOR THE OTHER SEVERELY DISABLED THAT IS**  
109 **QUALIFIED UNDER STATE LAW, IN THE SAME MANNER AND UNDER THE**  
110 **SAME PROCEDURES SET FORTH IN THE STATE USE LAW; AND FOR PURPOSES**  
111 **OF THIS CONTRACT, THE PERSON, FIRM, OR OTHER BUSINESS ENTITY**  
112 **CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO**  
113 **BE SUBSTITUTED FOR THE STATE AGENCY INsofar AS DEALINGS WITH**  
114 **SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED."**

115           **7. No similar product or service of comparable price and quality found necessary**  
116 **for use by any state agency shall be purchased from any source other than the nonprofit**  
117 **agency for the blind or nonprofit agency for the other severely disabled if the nonprofit**  
118 **agency certifies that the product is manufactured or supplied by, or the service is provided**  
119 **by, the blind or other severely disabled and the product or service meets the comparable**  
120 **performance specifications and comparable price and quality requirements as determined**  
121 **by the commissioner. The purchasing authority of any state agency may make reasonable**  
122 **determinations of need, price, and quality with reference to products or services available**  
123 **from the nonprofit agency.**

124           **8. In furtherance of the purposes of this section and in order to contribute to the**  
125 **economy of state government, it is the intent of the general assembly that there be close**  
126 **cooperation between the commissioner and any agency of this state from which**  
127 **procurement of products or services is required under this section. The commissioner and**  
128 **any such agency of this state are authorized to enter into such contractual agreements,**  
129 **cooperative working relationships, or other arrangements as may be determined to be**  
130 **necessary for effective coordination and efficient realization of the objective of this section**  
131 **and any other law requiring procurement of products and services from any state agency.**

132           **9. The commissioner may secure directly from any agency of this state information**  
133 **necessary to enable it to carry out this section. Upon request of the department, the head**  
134 **of the agency shall furnish such information to the office of administration.**

135           **10. By the last business day of the first month following the end of each state fiscal**  
136 **year, the head of each agency of this state shall prepare and submit a report of its**  
137 **purchases under this section.**

138           **11. The commissioner shall, by the last business day of the second month following**  
139 **the end of each state fiscal year, publish an annual report of the performance of the state**  
140 **use program to all qualified nonprofit agencies for the blind, all qualified nonprofit**  
141 **agencies for the other severely disabled, all state agencies, the governor, and the general**  
142 **assembly.**

143           **12. In furtherance of this section and to collaborate to further the policy objective**  
144 **described in this section, the governor may elect to appoint a committee of no fewer than:**

- 145           **(1) Five members of the general assembly;**  
146           **(2) At least one representative of qualified nonprofit agencies for the blind;**  
147           **(3) At least one representative of qualified nonprofit agencies of the other severely**  
148 **disabled; and**  
149           **(4) At least one private citizen.**

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