

REPORT OF THE
HOUSE FINANCE AND SENATE FINANCE SUBCOMMITTEE STUDYING
TAX CREDITS TO BUSINESSES AWARDING CONTRACTS TO
FACILITIES SERVING THE HANDICAPPED

To

The Governor

And

The General Assembly of Virginia



Senate Document No. 7

Commonwealth of Virginia
Department of Purchases and Supply
Richmond

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MEMBERS OF THE SUBCOMMITTEE

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Report of the

House Finance and Senate Finance Subcommittee Studying

Tax Credits to Businesses Awarding Contracts to

Facilities Serving the Handicapped

To

The Governor and the General Assembly of Virginia

Richmond, Virginia

December, 1977

TO: Honorable Mills E. Godwin, Governor of Virginia

and

The General Assembly of Virginia

I. INTRODUCTION

Senate Joint Resolution No. 103 of the 1977 Session of the General Assembly directed a joint subcommittee of the House and Senate Finance Committees to study the feasibility of providing tax incentives to businesses awarding contracts to facilities serving the handicapped.

SENATE JOINT RESOLUTION NO. 103

WHEREAS, the severely limiting nature of severely handicapping conditions prevents some disabled individuals from successfully entering or performing in the competitive labor market; and

WHEREAS, many severely handicapped individuals must enter employment at a less than competitive level in sheltered workshops or facilities; and

WHEREAS, these sheltered workshops or other facilities depend to a large extent on obtaining contracts from private industries and industrial organizations; and

WHEREAS, certain private industries already prefer to award contracts

to sheltered workshops or other facilities serving the severely handicapped, but are not recognized for these efforts; and

WHEREAS, additional business and industrial organizations must be encouraged to award contracts to sheltered workshops and facilities serving the severely handicapped; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee of the Committees on Finance of both houses is requested to study the feasibility of affording tax incentives to businesses and industrial organizations for awarding contracts to sheltered workshops or other facilities which serve the severely handicapped.

Pursuant to this directive, the following were appointed to serve on the subcommittee: Senator Adelard L. Brault, Chairman; Senator Howard P. Anderson; Senator Herbert H. Bateman; Senator Clive L. DuVal, II; Senator Omer L. Hirst; Senator William F. Parkerson, Jr.; Delegate David G. Brickley; Delegate Warren G. Stambaugh.

The Division of Legislative Services made facilities and the following staff available to the Committee to carry out the study directives: Louis Joseph Fortier, John A. Garka, E. M. Miller, Jr. and Jill M. Pope.

The Subcommittee held several meetings at which time persons knowledgeable in sheltered workshop management, persons involved in State and local procurement and representatives of management from the private business sector gave the Subcommittee information. The Subcommittee also had input from other various State agencies. Incentive programs available in all states and applicable federal legislation was also reviewed and discussed.

II. FINDINGS

A sheltered workshop is a public or private nonprofit facility providing a controlled working environment and rehabilitative services to handicapped persons over sixteen years of age to the end of teaching socialization and employment skills. The workshops usually have three components: work activity center, which provides therapeutic programs for the severely handicapped; training component, providing for movement into community employment after achievement of necessary skills; and extended employment component, which provides controlled working conditions for those persons unable to achieve the necessary skills to obtain employment in the community. Presently, there are 58 sheltered workshops in Virginia employing 2,000 handicapped persons. Their products include pens, brooms, mattresses, steel doors and other various items.

The ultimate goal of the sheltered workshop is to place every worker capable of competing into the private working community. Providing meaningful employment for those persons able to work only in a controlled environment is the second highest priority.

The majority of workshops are private nonprofit organizations. Others

are associated with the Department of Mental Health and Mental Retardation or the Department of Vocational Rehabilitation. In localities where there are local Mental Health and Mental Retardation Boards created under Chapter 10 of Title 37.1 of the Code of Virginia, the workshops often receive State and local matching funds; however, such funds are specifically earmarked for operating expenses. Chapter 10 funds account for approximately 19.5% of the total budgets of workshops. If a workshop is to set up production capability, it is necessary for them to purchase machinery, miscellaneous equipment, raw materials and supplies. Such funds cannot generally be utilized for such purposes.

Other sources of funds are received from fees paid to the workshops from the Department of Vocational Rehabilitation for services rendered to patients placed in workshops. Private donations, local governmental appropriations, where no Chapter 10 board exists, and direct federal assistance constitute other categories of revenue possibility. It should be noted, however, that the majority of these funds must be used to operate or expand the rehabilitation program and not to support the production program of the workshop.

The major single source of funding for workshops, however, is the sale of goods and services supplied to public and private businesses. This accounts for 34.8% of the average workshop budget. Since this represents such a significant portion of a workshop's budget, the workshop must have a consistent demand for their products to stay in operation.

At present, the demand is low and sporadic. Businesses tend to buy their products elsewhere because they are unaware of the capabilities of the sheltered workshops or feel that they cannot provide quality products. Thus, without contracts, the workshops are unable to establish a business history to show that they are capable of conducting an efficient business, making quality products at the fair market price and in sufficient quantities within a specified time frame.

Evidence was presented to the Joint Subcommittee showing numerous cases where high quality products could be supplied by workshops at cost reductions to businesses so contracting. One such example involved a contract between the Chesapeake and Potomac Telephone Company and the Cordett Foundation for the resurfacing of used telephone housings. The contract price represented a substantial savings to C & P over what the same recycling process would have cost had such process been performed elsewhere.

III. SUBCOMMITTEE CONSIDERATIONS

The staff of the Subcommittee made a thorough investigation of inducement programs established in other states to encourage the purchase of commodities of the handicapped. Tax incentives as inducements were practically nonexistent. However, numerous states had established "set-aside programs." Generally, a "set-aside program" is a procedure whereby a governmental entity determines that it will buy a specific product or service only from a qualified sheltered workshop or other similar facility.

It should also be pointed out that in 1938, "set-aside" legislation was enacted on the federal level for products and services of the visually handicapped. The act was expanded in 1971 to include products and services of the severely handicapped. This act will be examined fully later in the report.

"Set-aside programs" are not new to the Commonwealth of Virginia. Article 3 of Title 53 of the Code of Virginia (§ 53-61 et seq.) enacted in 1933 requires all departments, institutions and agencies of the State to make their purchases of articles and supplies from the Department of Corrections unless the Director of the Division of Purchases and Supply is of the opinion that such articles or supplies do "not meet the reasonable requirements" of such agency or where the requisition cannot be complied with completely on account of an insufficient supply. In addition, § 2.1-450 of the Code of Virginia provides that items which cannot be furnished by the Department of Corrections shall be purchased from schools or workshops under the supervision of the Virginia Commission for the Visually Handicapped, if such items are available for sale by such schools or workshops and if such items conform to the standards established by the Division of Purchases and Supply and can be purchased at a fair market value.

The federal government "set-aside" program is much more complicated but in actuality accomplishes an identical purpose. The program is administered by the Committee for the Purchase from the Blind and Other Severely Handicapped with the National Industries for the Blind and the National Industries for the Severely Handicapped, both private nonprofit organizations aiding the visually and severely handicapped, acting as liaison between the sheltered workshops and the Committee.

The procedure for having a product set aside is a long and arduous task for the workshops usually taking about nine months. Studies must be made regarding market conditions, availability of supplies and the actual procedure. Combined as a package, the workshop submits the information to the liaison agency who must approve the package. The liaison agency then submits the package to the Committee for approval. The proposal to have a product set aside is printed in the "Federal Register" for 30 days. If no objections are made, the product is deemed set aside and is declared so in the "Federal Register." The Committee determines the fair market price and reviews it annually. A set aside product may be purchased only from the workshop which has indicated its intention and ability to produce it.

The federal government has implemented a priority system regarding set aside products. First priority products are those produced by the Prison Industries; second, visually handicapped; third, other severely handicapped. There is no priority system for services.

Figures from NISH indicate that in 1976, three workshops in Virginia had service contracts with the Federal Government in the amount of \$49,684, providing employment for 138 persons. On the national level, 75 workshops participating in the set aside program provided employment for

1,507 handicapped persons. The total contracts amounted to \$16,781,083. The federal "set-aside" program has been effective in the sense that it has given the sheltered workshops an opportunity to provide stable employment for its employees and an opportunity to establish a good business history.

In addition to federal "set-asides" numerous states have similar programs. In these states workshops were required to meet standards of quality and quantity timely and usually at a price determined to be the fair market value of the goods by the respective Director of Purchases. In the event that a good or service has been specifically designated to another facility (i.e., corrections) or in an emergency purchase situation, the statutory mandate of purchasing from sheltered workshops is relaxed.

There are basically two types of State "set aside" legislation. One such program provides that if the workshop can meet certain general standards, the state must buy those goods and services. Another merely indicates the intention of the state to help workshops and the Department of Purchases is encouraged to make their purchases from workshops. Some of the states which have a "set aside" program also set up independent agencies whose duty it is to coordinate purchase agreements between the government and workshops.

Other states have instituted unique approaches to state "set-aside." Hawaii, for example, requires its Director of Purchases to buy goods from sheltered workshops if the price of such goods is within a 5% margin. West Virginia will not place goods or services up to a competitive bid if a workshop can meet what the Director of Purchases considers to be a fair market price.

IV. RECOMMENDATIONS AND RATIONALE

The Subcommittee explored numerous suggestions for offering tax incentives to businesses contracting with workshops. All suggestions related to the State income tax. It was determined that a deduction or credit on the corporate income tax was not supported by the business community. Businesses currently contracting with workshops expressed the opinion that this type of proposal would not have been a major factor in their decision to contract with a workshop. Such businesses were, in fact, enticed by the fact that they could receive quality products at a competitive cost while at the same time supporting a worthwhile community project. Also, companies not presently engaged in workshop contracts stated that they would not be swayed toward a workshop contract because of a income tax credit or deduction.

Since the study resolution spoke solely in terms of tax incentives for businesses contracting with workshops and the Subcommittee was of the initial conclusion that such incentives would serve little purpose, the Subcommittee unanimously agreed to explore other alternatives to assist sheltered workshops in performing their mission.

The Virginia Retail Sales and Use Tax was the first alternative explored. Materials purchased by workshops are used for manufacturing or

future processing hence there would be no sales tax liability at this point as such materials would already be specifically exempted from the tax. Also, since the items manufactured by workshops are normally performed in a SubContractor capacity and, in any event, are items made for resale purposes, the sales tax would not be applicable at this stage.

Transportation to and from workshops is often furnished to workers by the workshop. The Subcommittee concluded that refunding the motor vehicle fuel tax paid by the workshops would in no way assist the workshops in securing contracts. Neither would it amount to a significant contribution in relation to a workshop's overall budget.

A direct appropriation to workshops was also discussed, but was again not felt to be the proper approach in assuring that a workshop would survive as a viable manufacturing and working enterprise within the business community. What was determined to be needed was an opportunity allowing the workshops to prove themselves by establishing a performance record with public and private businesses.

The Subcommittee lastly examined the various "set-aside programs" currently utilized by the federal government and numerous other states (See Appendix I). The Subcommittee concluded that this type of program could provide the workshops with the impetus needed to establish a track record regarding their various capabilities. With this approach in mind, your Subcommittee makes the following recommendation.

That the Division of Purchases and Supply shall publish annually a list consisting of not less than twelve categories of materials, supplies and equipment representing items which the Division has difficulty procuring either by reason of limited competition in purchase price or product quality. Such list shall not include items currently produced by schools or workshops under the supervision of the Virginia Commission for the Visually Handicapped or inmates confined in State correctional institutions. Any items included on the list shall be purchased by the Division from nonprofit sheltered workshops serving the handicapped without the necessity of competitive bidding, if the Director of the Division of Purchases and Supply is satisfied that such items: (1) can be purchased at their fair market value; (2) will be of acceptable quality; and, (3) are or can be produced in sufficient quantities within the time demands required.

Also the Subcommittee was of the opinion that materials, supplies and equipment not included on the list of preferential items to be procured from sheltered workshops at the time such list was published, but was later discovered to be an item which the Division could not readily procure because of scarcity of supply or lack of competitive bidding, may be purchased by the Director from a sheltered without competitive bid if such purchase would be within the best interests of the Commonwealth.

Your Subcommittee also suggests that the attached legislation (see Appendix II) be introduced in the 1978 Session of the General Assembly to

mandate their recommended program of "set asides" for sheltered workshops.

On November 11, 1977, the Senate Finance Committee unanimously adopted this report of the Joint Subcommittee and on November 21, 1977, the report was unanimously adopted by the House of Delegates Finance Committee.

Respectfully submitted,

Adelard L. Brault, Chairman

Howard P. Anderson

Herbert H. Bateman

David G. Brickley

Clive L. DuVal, II

Omer L. Hirst

William F. Parkerson, Jr.

Warren G. Stambaugh

APPENDIX I

INCENTIVE PROGRAMS ESTABLISHED BY OTHER STATES

<u>State</u>	<u>Tax Incentives</u>	<u>Set Aside Programs</u>	<u>Other Incentives</u>	<u>Pending Legislation</u>
Arizona			Certain preferences to handicapped persons	
Colorado				
Connecticut		Passed - last session Effective - July 1, 1977		
Georgia				
Hawaii			Act 175 passed in 1976 provides a 5% preference for sheltered workshop products	
Idaho				
Illinois				
Indiana				
Iowa				
Kentucky				Special consideration for special workshops. Bill defeated in 1976
Maine			Exempt from State income tax	
Maryland			Exemptions for nonprofit organization	

<u>State</u>	<u>Tax Incentive</u>	<u>Set Aside Programs</u>	<u>Other Incentives</u>	<u>Pending Legislation</u>
Oregon			Nonprofit organization; tax exemptions	
Pennsylvania		Enacted 1953 Expanded 1963		
S. Carolina				
S. Dakota				
Tennessee		Passed, May 4, 1977		
Texas				
Utah				
Washington			Sheltered workshops exempt from property tax and the business and occupation tax; authorization and encouragement of purchases from sheltered workshops	
W. Virginia			Nonprofit organization; Exemptions from competitive bidding	
Wisconsin				

<u>State</u>	<u>Tax Incentives</u>	<u>Set Aside Programs</u>	<u>Other Incentives</u>	<u>Pending Legislation</u>
Massachusetts & Minnesota	Not specifically to nonprofit organizations	Enacted - 1975 amended and extended 1977		
Missouri				
Montana		Passed 1976 Session Effective July 1, 1977		
New Hampshire			Allows State agencies to purchase from sheltered workshops except where it is prohibited by law but does not require such purchase from sheltered workshops	
New Jersey		Pending		An Act to establish a handicapped products and services council to facilitate purchases of sheltered workshops
New Mexico				
N. Dakota				
Ohio		Applicable except where such purchases would conflict with State agencies producing same products	Nonprofit organization tax exemptions - exemption from competitive bidding	
Oklahoma				

APPENDIX II

A BILL to amend the Code of Virginia by adding a section numbered 2.1-450.1, relating to purchases from nonprofit sheltered workshops.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 2.1-450.1 as follows:

§ 2.1-450.1. Purchases from nonprofit sheltered workshops serving the handicapped.—A. The Division shall publish annually a list consisting of not less than twelve categories of materials, supplies and equipment representing items which the Division has had difficulty procuring, either by reason of limited competition in purchase price or product quality. Such list shall exclude items currently produced by schools or workshops under the supervision of the Virginia Commission for the Visually Handicapped or by inmates confined in State correctional institutions.

B. Any item included on the list required by subsection A. shall be purchased by the Division from nonprofit sheltered workshops serving the handicapped without the necessity of competitive bidding, if the Division is satisfied that such items (i) can be purchased at their fair market value, (ii) will be of acceptable quality and, (iii) can be produced in sufficient quantities within the time demands required.

C. Nothing in this section shall prohibit the Division from amending the list required under subsection A by adding additional categories as they may develop after such list has been published .

