

House Bill 2555

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Defines "individual with a disability" for products of individuals with disabilities as individual who receives Social Security disability benefits or Social Security income. Provides that provisions of procurement law relating to products of individuals with disabilities apply only to certain public agencies.

Directs Commissioner of Bureau of Labor and Industries to determine suitability and prices of products of individuals with disabilities for procurement by public agencies. Requires commissioner to issue notice of determination of suitability and price to interested parties and to establish procedure for protest of commissioner's determination.

Establishes Commission for the Products of Individuals with Disabilities. Provides that actions of Commissioner of Bureau of Labor and Industries with respect to procurement law for products of individuals with disabilities are subject to policies of commission.

Becomes operative January 1, 2010.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to products of individuals with disabilities; creating new provisions; amending ORS 261.335,
3 279.835, 279.845, 279.850, 279.855 and 565.442; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 279.835 is amended to read:

6 279.835. As used in ORS 279.835 to 279.855:

7 [(1) "Department" means the Oregon Department of Administrative Services.]

8 [(2)] (1)(a) "Direct labor" [*includes all*] **means** work required for preparation, processing and
9 packing[.].

10 (b) "Direct labor" **does not include** [*but not*] supervision, administration, inspection [*and*] or
11 shipping.

12 [(3)] (2) "Individual with a disability" means an individual who, because of the nature of **the**
13 **individual's** disabilities, is **receiving federal Social Security disability benefits or income from**
14 **Social Security**, is not able to participate [*fully*] in competitive **full-time or part-time**
15 employment[.], and **is an individual** for whom specialized employment opportunities must be pro-
16 vided.

17 (3) "Interested party" **means a business that produces a product with specifications**
18 **similar to a product determined to be suitable for procurement under ORS 279.835 to 279.855**
19 **or a labor organization that has a collective bargaining agreement with the business.**

20 (4)(a) "Public agency" [*or "public contracting agency"*] means [*any*] **an** agency of the State of
21 Oregon [*or any political subdivision thereof*] authorized by law to enter into public contracts [*and*
22 *any public body created by intergovernmental agreement*].

23 (b) "Public agency" **does not include a local government or subdivision of the State of**
24 **Oregon, a local school district, an educational service district, the Oregon University System,**
25 **an institution of higher education identified in ORS 352.002 or a community college.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (5) “Qualified nonprofit agency for individuals with disabilities” means a nonprofit activity cen-
 2 ter or rehabilitation facility:

3 (a) Organized under the laws of the United States or of this state and operated in the interest
 4 of individuals with disabilities, *[and]* the net income of which does not inure in whole or in part to
 5 the benefit of *[any]* a shareholder or other individual;

6 (b) That complies with *[any]* applicable occupational health and safety *[standard]* **standards** re-
 7 quired by the laws of the United States or of this state; and

8 (c) That in the manufacture of products and in the provision of services, whether or not the
 9 products or services are procured under ORS 279.835 to 279.855, during the fiscal year **July 1 to**
 10 **June 30** employs individuals with disabilities for not less than 75 percent of the work hours of direct
 11 labor required **in each contract** for the manufacture or provision of the products or services.

12 **SECTION 2.** ORS 279.845 is amended to read:

13 279.845. (1) *[It is the duty of the Oregon Department of Administrative Services to:]* **The Com-**
 14 **missioner of the Bureau of Labor and Industries, in consultation with and subject to the**
 15 **policies set forth by the Commission for the Products of Individuals with Disabilities estab-**
 16 **lished in section 6 of this 2009 Act, shall:**

17 (a) Determine the price of *[all]* products manufactured and services offered for sale to *[the var-*
 18 *ious]* public agencies by *[any]* a qualified nonprofit agency for individuals with disabilities. The price
 19 shall recover for the *[workshops]* **qualified nonprofit agency for individuals with disabilities** the
 20 cost of raw materials, labor, overhead, delivery costs and a margin held in reserve for inventory and
 21 equipment replacement;

22 (b) *[To]* Revise *[such prices]* **the price** from time to time in accordance with changing cost fac-
 23 tors; and

24 (c) *[To]* Make *[such]* rules regarding specifications, time of delivery and other relevant matters
 25 of procedure *[as shall be]* **that are** necessary to carry out the purposes of ORS 279.835 to 279.855,
 26 279A.025 (4) and 279C.335.

27 (2) The *[department]* **commissioner** shall establish and publish a list of sources or potential
 28 sources of products produced **and services provided** by *[any]* qualified nonprofit *[agency]* **agencies**
 29 for individuals with disabilities *[and the services provided by any such agency, which the*
 30 *department]* **that the commissioner** determines are suitable for procurement by public agencies
 31 pursuant to ORS 279.835 to 279.855, 279A.025 (4) and 279C.335. *[This]* **The commissioner shall**
 32 **distribute the** procurement list and revisions *[thereof shall be distributed]* **to the procurement list**
 33 to all public purchasing officers.

34 (3) The *[department]* **commissioner** may not delegate *[any]* a duty imposed under this section
 35 to *[any]* a person or public agency outside of the *[department]* **Bureau of Labor and Industries.**

36 **SECTION 3.** ORS 279.850 is amended to read:

37 279.850. (1) *[If any]* **A** public agency **that** intends to procure *[any]* a product or service on the
 38 procurement list **established under ORS 279.845** *[, that public agency]* shall, in accordance with
 39 rules of the *[Oregon Department of Administrative Services]* **Commissioner of the Bureau of Labor**
 40 **and Industries,** procure *[such]* **the** product or service, at the price established by the *[department]*
 41 **commissioner,** from a qualified nonprofit agency for individuals with disabilities, provided the
 42 product or service is of the appropriate specifications and is available within the period required
 43 by *[that]* **the** public agency.

44 (2) In furthering the purposes of ORS 279.835 to 279.855, 279A.025 (4) and 279C.335, it is the
 45 intent of the Legislative Assembly that there be close cooperation between the *[department]* **com-**

1 **missioner**, public [*contracting*] agencies and qualified nonprofit agencies for individuals with disa-
 2 bilities. The [*department*] **commissioner** on behalf of public [*contracting*] agencies and qualified
 3 nonprofit agencies for individuals with disabilities is authorized to enter into [*such*] contractual
 4 agreements, cooperative working relationships or other arrangements [*as may be determined to be*]
 5 **that are** necessary for effective coordination and efficient realization of the objectives of ORS
 6 279.835 to 279.855, 279A.025 (4) and 279C.335 and any other law requiring procurement of products
 7 or services.

8 **SECTION 4.** ORS 279.855 is amended to read:

9 279.855. The following may purchase equipment, materials, supplies and services [*through the*
 10 *Oregon Department of Administrative Services*] **from a procurement list established under ORS**
 11 **279.845** in the same manner as state agencies **do and** as provided in ORS 279A.140 to 279A.155 and
 12 279A.250 to 279A.290:

13 (1) Qualified nonprofit agencies for individuals with disabilities participating in the program set
 14 forth in ORS 279.835 to 279.855, 279A.025 (4) and 279C.335.

15 (2) Residential programs when under contract with the Department of Human Services to pro-
 16 vide services to youth in the custody of the state.

17 (3) Public benefit corporations, as defined in ORS 65.001, that provide public services either
 18 under contract with a state agency, as defined in ORS 171.133, or under contract with a unit of local
 19 government, as defined in ORS 190.003, that funds the contract, in whole or in part, with state funds.

20 **SECTION 5. Sections 6 and 7 of this 2009 Act are added to and made a part of ORS 279.835**
 21 **to 279.855.**

22 **SECTION 6. (1) There is established the Commission for the Products of Individuals with**
 23 **Disabilities, consisting of 10 members appointed by the Governor as follows:**

24 (a) **Five members who represent individuals with disabilities, as defined in ORS 279.835;**

25 (b) **Two members who represent for-profit businesses;**

26 (c) **One member who represents private-sector labor organizations;**

27 (d) **One member who represents public-sector labor organizations; and**

28 (e) **One member who represents the Commissioner of the Bureau of Labor and Indus-**
 29 **tries.**

30 (2) **The appointment of a member of the commission is subject to the confirmation of the**
 31 **Senate in the manner prescribed in ORS 171.562 and 171.565.**

32 (3) **The term of office of each member is three years, but a member serves at the pleas-**
 33 **ure of the Governor. Before the expiration of a member's term, the Governor shall appoint**
 34 **a successor whose term begins on January 1 next following. A member is eligible for reap-**
 35 **pointment. If there is a vacancy, the Governor shall make an appointment that is imme-**
 36 **diately effective for the unexpired term.**

37 (4) **The purpose of the commission is to set policy for the implementation and adminis-**
 38 **tration of ORS 279.835 to 279.855 and to further the policy of this state to encourage and**
 39 **assist individuals with disabilities who cannot participate, with reasonable accommodation,**
 40 **in competitive full-time or part-time employment to find useful, productive and gainful em-**
 41 **ployment.**

42 (5) **The commission shall:**

43 (a) **Make findings and set policies for identifying and serving individuals with disabilities**
 44 **who cannot participate in competitive full-time or part-time employment with reasonable**
 45 **accommodation.**

1 (b) Develop policies and recommendations to expand opportunities for individuals with
2 disabilities to find useful, productive and gainful employment.

3 (c) Set standards for determining who qualifies as an individual with disabilities for the
4 purposes of ORS 279.835 to 279.855.

5 (d) Set standards for the Commissioner of the Bureau of Labor and Industries to use in
6 establishing the list described in ORS 279.845.

7 (e) Set standards for the qualification of nonprofit agencies for individuals with disabili-
8 ties.

9 (f) Establish a process to reconsider decisions of the commission.

10 (6) The commission may:

11 (a) Enter into contracts the commission determines are necessary to carry out the duties
12 of the commission.

13 (b) Perform duties necessary to set policies, standards and guidelines for the full imple-
14 mentation and administration of ORS 279.835 to 279.855.

15 (7) The commission shall select one of the commission's members as chairperson and one
16 member as vice chairperson for such terms and with duties and powers necessary for the
17 performance of the functions of the offices as the commission may determine.

18 (8) A majority of the members of the commission constitutes a quorum for the trans-
19 action of business of the commission.

20 (9) The commission shall meet at least once every three months at a place, day and hour
21 determined by the commission. The commission may also meet at other times and places at
22 the call of the chairperson or a majority of the members of the commission.

23 (10) A member of the commission is entitled to compensation and expenses as provided
24 in ORS 292.495.

25 (11) The Bureau of Labor and Industries shall provide staff support to the commission.

26 **SECTION 7.** (1) The Commissioner of the Bureau of Labor and Industries by rule shall
27 develop a procedure for an interested party to protest the commissioner's determination of
28 the suitability or pricing of a product that appears on the procurement list described in ORS
29 279.845. The procedure at a minimum shall provide a means for an interested party to peti-
30 tion for a reconsideration of the commissioner's determination and shall allow the presen-
31 tation of evidence to contest the determination.

32 (2) The commissioner shall provide an interested party with notice of the commissioner's
33 determination of the suitability or pricing of a product within 30 days after the commissioner
34 makes the determination. The commissioner shall allow an interested party to file a protest
35 with the commissioner within 60 days after the commissioner issues the notice required un-
36 der this subsection.

37 **SECTION 8.** Notwithstanding the term of office specified in section 6 of this 2009 Act, of
38 the members first appointed to the Commission for the Products of Individuals with Disa-
39 bilities:

40 (1) Three shall serve for a term ending January 1, 2011;

41 (2) Three shall serve for a term ending January 1, 2012; and

42 (3) Four shall serve for a term ending January 1, 2013.

43 **SECTION 9.** ORS 261.335 is amended to read:

44 261.335. (1) Except as otherwise provided in subsection (2) of this section, people's utility dis-
45 tricts are subject to the public contracting and purchasing requirements of ORS [279.835 to

1 279.855,] 279C.005, 279C.100 to 279C.125 and 279C.300 to 279C.470 and ORS chapters 279A and 279B,
 2 except ORS 279A.140 and 279A.250 to 279A.290.

3 (2) The public contracting and purchasing requirements of ORS 279.835 to 279.855, 279C.005,
 4 279C.100 to 279C.125 and 279C.300 to 279C.470 and ORS chapters 279A and 279B do not apply to
 5 contracts entered into by districts for the acquisition, construction, improvement or equipping of a
 6 renewable energy facility or for the purchase or sale of electricity, electrical capacity or renewable
 7 energy certificates.

8 **SECTION 10.** ORS 565.442 is amended to read:

9 565.442. (1) On or before October 31 of each year, a county fair board must submit to the County
 10 Fair Commission, on a form approved by the commission, data for the period since the preceding
 11 report date regarding:

12 (a) Use of the county fairgrounds by youths and adults;

13 (b) Participation in county fairs by youths and adults;

14 (c) Evidence of community involvement in county fairs;

15 (d) Attendance at county fair and nonfair events;

16 (e) The most recent fiscal year budget for the county fairgrounds and evidence of compliance
 17 with open meeting law pursuant to ORS 192.610 to 192.690 in developing the budget;

18 (f) Compliance with public contracting and purchasing law under [ORS 279.835 to 279.855 and]
 19 ORS chapters 279A, 279B and 279C;

20 (g) The most recent business plan for the county fairgrounds;

21 (h) Maintenance of liability insurance in an amount satisfactory to the County Fair Commission;
 22 and

23 (i) Use of state funds distributed to the county fairs.

24 (2) If a county fair board fails to timely submit the data required by subsection (1) of this sec-
 25 tion, the county fair administered by that board is ineligible for state funding, including but not
 26 limited to, funding under ORS 565.445, for a period determined by the County Fair Commission, not
 27 to exceed one year. A county fair may appeal a commission decision under this subsection to the
 28 Director of Agriculture, whose decision is subject to ORS chapter 183.

29 (3) The County Fair Commission may contract for the collection and summarizing of data re-
 30 quired to be submitted under subsection (1) of this section. The commission shall send a summary
 31 of the data to the Director of Agriculture.

32 **SECTION 11.** (1) **Sections 6 to 8 of this 2009 Act and the amendments to ORS 261.335,**
 33 **279.835, 279.845, 279.850, 279.855 and 565.442 by sections 1 to 4 and 9 and 10 of this 2009 Act**
 34 **become operative January 1, 2010.**

35 **(2) The Governor may appoint members of the Commission for the Products of Individ-**
 36 **uals with Disabilities before the operative date of this 2009 Act.**

37 **(3) The Commissioner of the Bureau of Labor and Industries may take any action before**
 38 **the operative date of sections 6 to 8 of this 2009 Act and the amendments to ORS 261.335,**
 39 **279.835, 279.845, 279.850, 279.855 and 565.442 by sections 1 to 4 and 9 and 10 of this 2009 Act**
 40 **that is necessary to enable the commissioner to exercise, on and after the operative date of**
 41 **sections 6 to 8 of this 2009 Act and the amendments to ORS 261.335, 279.835, 279.845, 279.850,**
 42 **279.855 and 565.442 by sections 1 to 4 and 9 and 10 of this 2009 Act, all the duties, functions**
 43 **and powers conferred on the commissioner by sections 6 to 8 of this 2009 Act and the**
 44 **amendments to ORS 261.335, 279.835, 279.845, 279.850, 279.855 and 565.442 by sections 1 to 4**
 45 **and 9 and 10 of this 2009 Act.**

1 (4) Sections 6 to 8 of this 2009 Act and the amendments to ORS 261.335, 279.835, 279.845,
2 279.850, 279.855 and 565.442 by sections 1 to 4 and 9 and 10 of this 2009 Act apply to contracts
3 first advertised or, if not advertised, first entered into on or after the operative date of this
4 2009 Act.

5 SECTION 12. This 2009 Act being necessary for the immediate preservation of the public
6 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
7 on its passage.

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