

House Bill 4118

Sponsored by Representative HOYLE; Representative GORSEK (Presession filed.)

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**.

Requires qualified nonprofit agency for individuals with disabilities to pay state minimum wage and otherwise comply with state labor and occupational health and safety laws.

Provides that Commissioner of Bureau of Labor and Industries may enforce payment rates and labor and occupational health and safety standards for qualified nonprofit agencies for individuals with disabilities, including conducting inspections and investigations, imposing fines and taking other actions. Requires commissioner to conduct inspections and investigations on not less than 10 percent of qualified nonprofit agencies for individuals with disabilities that are performing work in each fiscal year.

Requires public agency that contracts with qualified nonprofit agency for individuals with disabilities to pay fee to commissioner for purpose of funding commissioner's inspection, investigation and enforcement actions.

Creates QRF Labor Standards Enforcement Account within State Treasury. Directs commissioner to deposit moneys commissioner receives under Act into account. Continuously appropriates moneys in account to commissioner for purposes of Act.

Establishes Task Force on State Contracting With Qualified Rehabilitation Facilities. Prescribes membership and duties of task force.

Sunsets task force on date of convening of 2016 regular session of Legislative Assembly.

Becomes operative January 1, 2015.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to qualified nonprofit agencies for individuals with disabilities; appropriating money; and
3 declaring an emergency.

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

5 **SECTION 1. Sections 2, 3, 4, 5, 6 and 7 of this 2014 Act are added to and made a part of**
6 **ORS 279.835 to 279.855.**

7 **SECTION 2. (1) A qualified nonprofit agency for individuals with disabilities shall pay all**
8 **of the employees of the qualified nonprofit agency for individuals with disabilities, including**
9 **employees who are individuals with disabilities, at a rate that meets or exceeds the Oregon**
10 **minimum wage set forth in ORS 653.025 and otherwise in accordance with the provisions of**
11 **ORS 652.120 and the terms of the contract that the qualified nonprofit agency for individuals**
12 **with disabilities has with the public agency. The qualified nonprofit agency for individuals**
13 **with disabilities shall also comply with any other applicable provision of the labor or occu-**
14 **pational health and safety standards of this state.**

15 **(2) A qualified nonprofit agency for individuals with disabilities that violates the re-**
16 **quirements of subsection (1) of this section shall pay a fine to the Bureau of Labor and In-**
17 **dustries in an amount the Commissioner of the Bureau of Labor and Industries specifies by**
18 **rule and shall comply with any order the commissioner issues with respect to payments due**
19 **to employees of the qualified nonprofit agency for individuals with disabilities. Each instance**
20 **in which the qualified nonprofit agency for individuals with disabilities fails to pay an em-**
21 **ployee as provided in subsection (1) of this section constitutes a separate violation. The**

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 commissioner shall pay all moneys received under this subsection into the QRF Labor Stan-
 2 dards Enforcement Account created under section 6 of this 2014 Act.

3 (3) A public agency, in the public agency’s solicitation materials for a procurement, shall
 4 notify all prospective bidders or proposers of the requirement specified in subsection (1) of
 5 this section and provide in the public agency’s contracts with a qualified nonprofit agency
 6 for individuals with disabilities that payment in accordance with the provisions of subsection
 7 (1) of this section is a material term of the contract.

8 **SECTION 3.** (1)(a) At any reasonable time the Commissioner of the Bureau of Labor and
 9 Industries may enter the office or business establishment of any qualified nonprofit agency
 10 for individuals with disabilities and gather facts and information necessary to determine
 11 whether the qualified nonprofit agency for individuals with disabilities is complying with the
 12 provisions of section 2 (1) of this 2014 Act or with any other applicable provision of the labor
 13 or occupational health and safety standards of this state.

14 (b) The commissioner does not require a complaint or notification from any person to
 15 take an action described in paragraph (a) of this subsection.

16 (c) Each fiscal year, the commissioner shall take the actions described in paragraph (a)
 17 of this subsection with respect to not less than 10 percent of the qualified nonprofit agencies
 18 for individuals with disabilities that have or are performing a contract with a public agency
 19 under ORS 279.835 to 279.855.

20 (2) At the commissioner’s request, a qualified nonprofit agency for individuals with disa-
 21 bilities shall make available to the commissioner for inspection during normal business hours
 22 any payroll or other records the qualified nonprofit agency for individuals with disabilities
 23 has or controls that the commissioner deems necessary to determine whether the qualified
 24 nonprofit agency for individuals with disabilities is complying with the provisions of section
 25 2 (1) of this 2014 Act. The commissioner shall make the request a reasonable time in advance
 26 of the inspection.

27 (3) Notwithstanding ORS 192.410 to 192.505, a record that the commissioner obtains or
 28 makes under this section is not open to inspection by the public.

29 (4) The commissioner may, without necessity of an assignment, initiate legal proceedings
 30 against a qualified nonprofit agency for individuals with disabilities to enjoin future failures
 31 to comply with the provisions of section 2 (1) of this 2014 Act. The commissioner may recover
 32 as attorney fees, in addition to other costs, any sum the court or judge may determine is
 33 reasonable. If the commissioner does not prevail in the action, the commissioner shall pay
 34 all costs and disbursements from the Bureau of Labor and Industries Account.

35 **SECTION 4.** (1) A qualified nonprofit agency for individuals with disabilities that violates
 36 the provisions of section 2 (1) of this 2014 Act is liable to the affected employees of the
 37 qualified nonprofit agency for individuals with disabilities in the amount of the employees’
 38 unpaid minimum wages, including all fringe benefits, and in an additional amount, as liqui-
 39 dated damages, that is equal to the unpaid wages.

40 (2) An affected employee of the qualified nonprofit agency for individuals with disabilities
 41 may bring an action to enforce the liability described in subsection (1) of this section.

42 (3) If a public agency fails to provide in the advertisement for bids, the request for bids,
 43 the contract specifications, the accepted bid or elsewhere in the contract documents that the
 44 qualified nonprofit agency for individuals with disabilities must comply with the provisions
 45 of section 2 (1) of this 2014 Act, the public agency has joint and several liability for unpaid

1 minimum wages, as described in subsection (1) of this section, with the qualified nonprofit
 2 agency for individuals with disabilities that had notice of the requirement to comply with the
 3 provisions of section 2 (1) of this 2014 Act.

4 (4) The Commissioner of the Bureau of Labor and Industries may enforce the provisions
 5 this section by a civil action on an assigned wage claim under ORS 652.330 or by an admin-
 6 istrative proceeding on an assigned wage claim under ORS 652.332.

7 **SECTION 5.** (1)(a) The Commissioner of the Bureau of Labor and Industries by order
 8 shall establish a fee that a public agency that procures a product or service under ORS
 9 279.835 to 279.855 must pay. The commissioner shall use the fee to pay the costs of con-
 10 ducting inspections and investigations to determine whether a qualified rehabilitation facility
 11 is complying with the provisions of section 2 (1) of this 2014 Act.

12 (b) The commissioner shall establish the fee at 0.1 percent of the contract price, but may
 13 not charge or collect a fee that is less than \$250 or more than \$7,500.

14 (2) The commissioner shall pay moneys received under this section into the State
 15 Treasury. The State Treasurer shall credit the moneys to the QRF Labor Standards
 16 Enforcement Account created under section 6 of this 2014 Act.

17 (3) The public agency shall notify the commissioner in writing, on a form the commis-
 18 sioner prescribes, within 30 days after the public agency awards a contract under ORS
 19 279.835 to 279.855. The public agency shall accompany the notice with the fee described in
 20 subsection (1) of this section.

21 **SECTION 6.** The QRF Labor Standards Enforcement Account is created in the General
 22 Fund of the State Treasury. All moneys in the account are appropriated continuously to the
 23 Commissioner of the Bureau of Labor and Industries for the purposes set forth in sections
 24 2, 3, 4 and 5 of this 2014 Act.

25 **SECTION 7.** The Commissioner of the Bureau of Labor and Industries shall adopt rules
 26 in accordance with applicable provisions of ORS chapter 183 to administer and enforce
 27 sections 2, 3, 4, 5 and 6 of this 2104 Act.

28 **SECTION 8.** (1) The Task Force on State Contracting With Qualified Rehabilitation Fa-
 29 cilities is established, consisting of 13 members appointed as follows:

30 (a) The President of the Senate shall appoint two members from among members of the
 31 Senate.

32 (b) The Speaker of the House of Representatives shall appoint two members from among
 33 members of the House of Representatives.

34 (c) The Director of the Oregon Department of Administrative Services shall appoint eight
 35 representatives as follows:

36 (A) Two members who represent disability rights organizations;

37 (B) One representative from a labor organization that represents individuals with disa-
 38 bilities who are employed by a qualified nonprofit agency for individuals with disabilities;

39 (C) One representative from a labor organization that represents classified school em-
 40 ployees;

41 (D) One employee of the Oregon Department of Administrative Services;

42 (E) Two representatives from qualified nonprofit agencies for individuals with disabilities;
 43 and

44 (F) One representative from a contractor that is not a qualified nonprofit agency for in-
 45 dividuals with disabilities but that contracts with this state to perform work that qualified

1 nonprofit agencies for individuals with disabilities also perform.

2 (d) The Commissioner of the Bureau of Labor and Industries shall appoint a represen-
3 tative from the Bureau of Labor and Industries.

4 (2) The task force shall study and evaluate the role of qualified nonprofit agencies for
5 individuals with disabilities in state contracting, with particular attention to:

6 (a) Whether the state should presume that all workers with developmental and intellec-
7 tual disabilities are capable of working in an integrated employment setting and should be
8 integrated into the workplace.

9 (b) How the state can promote meaningful work and diversity of choice in work situ-
10 ations for employees of qualified nonprofit agencies for individuals with disabilities.

11 (c) What the state can do to reduce problems inherent in forming work crews for work
12 contracted to qualified nonprofit agencies for individuals with disabilities.

13 (d) How revisions to ORS 279.835 to 279.855 might affect qualified nonprofit agencies for
14 individuals with disabilities.

15 (e) How revisions to ORS 279.835 to 279.855 might affect contractors that are not qualified
16 nonprofit agencies for individuals with disabilities or affect the market for services that state
17 agencies ordinarily obtain from qualified nonprofit agencies for individuals with disabilities.

18 (3) The task force may conduct studies, discussions and presentations, take testimony
19 from experts and interested persons and otherwise investigate the issues set forth in sub-
20 section (2) of this section in any way that is reasonably necessary to provide adequate in-
21 formation.

22 (4) A majority of the members of the task force constitutes a quorum for the transaction
23 of business.

24 (5) Official action by the task force requires the approval of a majority of the members
25 of the task force.

26 (6) The task force shall elect one of its members to serve as chairperson.

27 (7) If there is a vacancy for any cause, the appointing authority shall make an appoint-
28 ment to become immediately effective.

29 (8) The task force shall meet at times and places specified by the call of the chairperson
30 or of a majority of the members of the task force.

31 (9) The task force may adopt rules necessary for the operation of the task force.

32 (10) The task force shall submit a report in the manner provided by ORS 192.245, and
33 may include recommendations for legislation, to an interim committee of the Legislative
34 Assembly related to public contracting no later than October 1, 2015.

35 (11) The Oregon Department of Administrative Services shall provide staff support to the
36 task force.

37 (12) Members of the task force who are not members of the Legislative Assembly are not
38 entitled to compensation, but may be reimbursed for actual and necessary travel and other
39 expenses incurred by them in the performance of their official duties in the manner and
40 amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions
41 of the task force shall be paid out of funds appropriated to the Oregon Department of Ad-
42 ministrative Services for purposes of the task force.

43 (13) All agencies of state government, as defined in ORS 174.111, are directed to assist
44 the task force in the performance of its duties and, to the extent permitted by laws relating
45 to confidentiality, to furnish such information and advice as the members of the task force

1 consider necessary to perform their duties.

2 **SECTION 9.** Section 8 of this 2014 Act is repealed on the date of the convening of the 2016
3 regular session of the Legislative Assembly as specified in ORS 171.010.

4 **SECTION 10.** Sections 2, 3, 4, 5, 6 and 7 of this 2014 Act apply to contracts that a public
5 agency advertises or otherwise solicits on or after the operative date set forth in section 11
6 (1) of this 2014 Act or, if the public agency does not advertise or solicit the contract, to a
7 contract that a public agency enters into on or after the operative date specified in section
8 11 (1) of this 2014 Act.

9 **SECTION 11.** (1) Sections 2, 3, 4, 5, 6 and 7 of this 2014 Act become operative on January
10 1, 2015.

11 (2) The Commissioner of the Bureau of Labor and Industries, the Director of the Oregon
12 Department of Administrative Services and a public agency that contracts with qualified
13 nonprofit agencies for individuals with disabilities may take any action before the operative
14 date specified in subsection (1) of this section that is necessary to enable the commissioner,
15 the director or the public agency to exercise, on and after the operative date specified in
16 subsection (1) of this section, the duties, functions and powers conferred on the commis-
17 sioner, the director or the public agency by sections 2, 3, 4, 5, 6 and 7 of this 2104 Act.

18 **SECTION 12.** This 2014 Act being necessary for the immediate preservation of the public
19 peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect
20 on its passage.

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