

D R A F T

SUMMARY

Requires qualified nonprofit agency for individuals with disabilities to pay prevailing rate of wage that Commissioner of Bureau of Labor and Industries determines and to comply with other applicable provisions of state labor standards.

Provides that commissioner may enforce rates of wage and labor and occupational health and safety standards for qualified nonprofit agencies for individuals with disabilities. Requires Director of Oregon Department of Administrative Services to remove from procurement list qualified nonprofit agency for individuals with disabilities that violates wage, labor and occupational health and safety standards more than three times in calendar year.

Requires public agency that terminates contract with qualified nonprofit agency for individuals with disabilities and enters into contract with second qualified nonprofit agency for individuals with disabilities to offer employment to individuals with disabilities who performed work under contract that public agency terminated.

Requires public agency that contracts with qualified nonprofit agency for individuals with disabilities to pay fee to commissioner. Creates QRF Labor Standards Enforcement Account within State Treasury.

Permits public agency to procure products and services from source other than qualified nonprofit agency for individuals with disabilities under specified circumstances. Permits public agency to grant preference to qualified nonprofit agency for individuals with disabilities that makes certain demonstrations.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

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Relating to qualified nonprofit agencies for individuals with disabilities; creating new provisions; amending ORS 279.850; and declaring an emergency.

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

1 **SECTION 1.** Sections 2, 4, 5, 6 and 7 of this 2015 Act are added to
2 and made a part of ORS 279.835 to 279.855.

3 **SECTION 2.** (1) A qualified nonprofit agency for individuals with
4 disabilities, in connection with a contract or agreement to provide
5 services to a public agency, shall pay all employees of the qualified
6 nonprofit agency for individuals with disabilities at a rate of wage that
7 meets or exceeds a rate that the Commissioner of the Bureau of Labor
8 and Industries determines in accordance with subsection (2) of this
9 section. The qualified nonprofit agency for individuals with disabilities
10 shall also comply with ORS 652.120, the provisions concerning wages
11 set forth in any contract or agreement the qualified nonprofit agency
12 for individuals with disabilities has with a public agency and any other
13 applicable provision of the labor or occupational health and safety
14 standards of this state. The provisions of this section control over any
15 conflicting provisions in a contract or agreement between a public
16 agency and a qualified nonprofit agency for individuals with disabili-
17 ties.

18 (2) At least once each year, the commissioner shall determine the
19 rate of wage that qualified nonprofit agencies for individuals with
20 disabilities must pay employees under subsection (1) of this section.
21 The rate that the commissioner determines must equal the rate that
22 the United States Secretary of Labor determines under the
23 McNamara-O'Hara Service Contract Act (41 U.S.C. 351 et seq.) and
24 related federal regulations. The commissioner may amend the rate at
25 any time.

26 **SECTION 3.** Section 2 of this 2015 Act is amended to read:

27 **Sec. 2.** (1) A qualified nonprofit agency for individuals with disabilities,
28 in connection with a contract or agreement to **produce and sell products**
29 **or** provide services to a public agency, shall pay all employees of the quali-
30 fied nonprofit agency for individuals with disabilities at a rate of wage that
31 meets or exceeds a rate that the Commissioner of the Bureau of Labor and

1 Industries determines in accordance with subsection (2) of this section. The
2 qualified nonprofit agency for individuals with disabilities shall also comply
3 with ORS 652.120, the provisions concerning wages set forth in any contract
4 or agreement the qualified nonprofit agency for individuals with disabilities
5 has with a public agency and any other applicable provision of the labor or
6 occupational health and safety standards of this state. The provisions of this
7 section control over any conflicting provisions in a contract or agreement
8 between a public agency and a qualified nonprofit agency for individuals
9 with disabilities.

10 (2) At least once each year, the commissioner shall determine the rate of
11 wage that qualified nonprofit agencies for individuals with disabilities must
12 pay employees under subsection (1) of this section. The rate that the com-
13 missioner determines must equal the rate that the United States Secretary
14 of Labor determines under the McNamara-O'Hara Service Contract Act (41
15 U.S.C. 351 et seq.) and related federal regulations. The commissioner may
16 amend the rate at any time.

17 **SECTION 4. (1)(a) At any reasonable time the Commissioner of the**
18 **Bureau of Labor and Industries may enter the office or business es-**
19 **tablishment of any qualified nonprofit agency for individuals with**
20 **disabilities and gather facts and information necessary to determine**
21 **whether the qualified nonprofit agency for individuals with disabilities**
22 **is complying with the provisions of section 2 (1) of this 2015 Act or with**
23 **any other applicable provision of the labor or occupational health and**
24 **safety standards of this state.**

25 **(b) The commissioner shall gather the facts and information de-**
26 **scribed in paragraph (a) of this subsection if within a one-year period**
27 **the commissioner receives two or more complaints from employees of**
28 **a qualified nonprofit agency for individuals with disabilities.**

29 **(2) At the commissioner's request and with reasonable advance no-**
30 **tice, a qualified nonprofit agency for individuals with disabilities shall**
31 **make available to the commissioner for inspection during normal**

1 **business hours any payroll or other records that the qualified**
2 **nonprofit agency for individuals with disabilities has or controls that**
3 **the commissioner deems necessary to determine whether the qualified**
4 **nonprofit agency for individuals with disabilities is complying with the**
5 **provisions of section 2 (1) of this 2015 Act.**

6 **(3) The commissioner shall make the results of the fact and infor-**
7 **mation gathering and inspections conducted under subsections (1) and**
8 **(2) available to the Oregon Department of Administrative Services,**
9 **which shall provide the results to public agencies that receive the list**
10 **of sources or potential sources of products and services the depart-**
11 **ment establishes under ORS 279.845 (2).**

12 **(4) If the commissioner finds that a qualified nonprofit agency for**
13 **individuals with disabilities violates the provisions of section 2 (1) of**
14 **this 2015 Act more than three times in a calendar year, the commis-**
15 **sioner shall notify the Director of the Oregon Department of Admin-**
16 **istrative Services, who shall remove the qualified nonprofit agency for**
17 **individuals with disabilities from the list the department establishes**
18 **under ORS 279.845 (2).**

19 **SECTION 5. If a public agency terminates a contract with a quali-**
20 **fied nonprofit agency for individuals with disabilities and enters into**
21 **a new contract with a second qualified nonprofit agency for individuals**
22 **with disabilities, the public agency shall, in the new contract, provide**
23 **that the second qualified nonprofit agency for individuals with disa-**
24 **bilities must, during a period that ends 60 days after the effective date**
25 **of the termination, offer employment to individuals with disabilities**
26 **who performed work under the contract that the public agency ter-**
27 **minated. The second qualified nonprofit agency for individuals with**
28 **disabilities may require an individual with a disability whom the sec-**
29 **ond qualified nonprofit agency for individuals with disabilities hires**
30 **under the circumstances described in this section to undergo the hir-**
31 **ing procedures and demonstrate during a probationary period the**

1 **qualifications that the second qualified nonprofit agency for individ-**
2 **uals with disabilities establishes for new hires.**

3 **SECTION 6. (1)(a) The Commissioner of the Bureau of Labor and**
4 **Industries by order shall establish a fee that a public agency that**
5 **procures a product or service under ORS 279.835 to 279.855 must pay.**
6 **The commissioner shall use the fee to pay the cost of conducting in-**
7 **spections and investigations to determine whether a qualified**
8 **nonprofit agency for individuals with disabilities is complying with the**
9 **provisions of section 2 (1) of this 2015 Act.**

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

13 **(2) The commissioner shall pay the moneys the commissioner re-**
14 **ceives under this section into the State Treasury. The State Treasurer**
15 **shall credit the moneys to the QRF Labor Standards Enforcement**
16 **Account established in section 7 of this 2015 Act.**

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

22 **SECTION 7. The QRF Labor Standards Enforcement Account is**
23 **created in the General Fund of the State Treasury. All moneys in the**
24 **account are appropriated continuously to the Commissioner of the**
25 **Bureau of Labor and Industries for the purposes set forth in section**
26 **4 of this 2015 Act.**

27 **SECTION 8. ORS 279.850 is amended to read:**

28 **279.850. (1)(a) Except as provided in paragraphs (b) and (c) of this**
29 **subsection, [If any] a public agency that intends to procure [any] a product**
30 **or service on the procurement list that the Oregon Department of Ad-**
31 **ministrative Services established under ORS 279.845[, that public**

1 agency] shall, in accordance with **the department's** rules [*of the Oregon*
2 *Department of Administrative Services*], procure [*such*] **the** product or
3 service[,] at the price [*established by*] the department **establishes**[,] from a
4 qualified nonprofit agency for individuals with disabilities, provided **that** the
5 product or service is of the appropriate specifications and is available within
6 the period [*required by that*] **the** public agency **requires**.

7 **(b) A public agency may procure a product or service that is on the**
8 **procurement list described in paragraph (a) of this subsection from a**
9 **source other than a qualified nonprofit agency for individuals with**
10 **disabilities if:**

11 **(A) None of the qualified nonprofit agencies for individuals with**
12 **disabilities on the procurement list the department provides to the**
13 **public agency have complied with the provisions of section 2 (1) of this**
14 **2015 Act or with any applicable local ordinance or resolution that**
15 **governs labor standards; and**

16 **(B) The contractor or vendor from which the public agency pro-**
17 **cures the product or service offers employment to employees of any**
18 **qualified nonprofit agency for individuals with disabilities from which**
19 **the public agency would have procured the product or service but for**
20 **the failure of the qualified nonprofit agency for individuals with disa-**
21 **bilities to comply with section 2 (1) of this 2015 Act or with an appli-**
22 **cable local ordinance or resolution.**

23 **(c) A public agency may give preference to a qualified nonprofit**
24 **agency for individuals with disabilities that demonstrates, better than**
25 **do alternative choices, that the qualified nonprofit agency for individ-**
26 **uals with disabilities:**

27 **(A) Provides wages, fringe benefits, pensions or other retirement**
28 **arrangements, health care and alternative dispute resolution services**
29 **that are substantially better than average; and**

30 **(B) Complies with the requirements set forth in section 2 (1) of this**
31 **2015 Act and with any applicable local ordinance or resolution that**

1 **governs labor standards.**

2 (2) In furthering the purposes of ORS 279.835 to 279.855, 279A.025 (4) and
3 279C.335, *[it is the intent of]* the Legislative Assembly **intends** *[that there be*
4 *close cooperation between]* **that** the department, public *[contracting]* agencies
5 and qualified nonprofit agencies for individuals with disabilities **cooperate**
6 **closely**. The department on behalf of public *[contracting]* agencies and qual-
7 ified nonprofit agencies for individuals with disabilities *[is authorized to]*
8 **may** enter into *[such]* contractual agreements, cooperative working re-
9 lationships or other arrangements *[as may be determined to be]* **that are**
10 necessary *[for effective coordination and efficient realization of]* **to effectively**
11 **coordinate and efficiently realize** the objectives of ORS 279.835 to 279.855,
12 279A.025 (4) and 279C.335 and any other law *[requiring]* **that governs a**
13 procurement of products or services.

14 **SECTION 9. Sections 2, 4, 5, 6 and 7 of this 2015 Act and the**
15 **amendments to ORS 279.850 by section 8 of this 2015 Act apply to con-**
16 **tracts into which a public agency enters on and after the operative**
17 **date specified in section 10 of this 2015 Act.**

18 **SECTION 10. (1) Sections 2, 4, 5, 6 and 7 of this 2015 Act and the**
19 **amendments to ORS 279.850 by section 8 of this 2015 Act become op-**
20 **erative January 1, 2016.**

21 (2) **The amendments to section 2 of this 2015 Act by section 3 of this**
22 **2015 Act become operative January 1, 2018.**

23 (3) **The Director of the Oregon Department of Administrative Ser-**
24 **vices may adopt rules and take any other action before the operative**
25 **date specified in subsection (1) of this section that is necessary to en-**
26 **able the director, on and after the operative date specified in sub-**
27 **section (1) of this section, to exercise all of the duties, functions and**
28 **powers conferred on the director by sections 2, 4, 5, 6 and 7 of this 2015**
29 **Act and the amendments to ORS 279.850 by section 8 of this 2015 Act.**

30 **SECTION 11. This 2015 Act being necessary for the immediate**
31 **preservation of the public peace, health and safety, an emergency is**

1 **declared to exist, and this 2015 Act takes effect on its passage.**

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