

Dear Members of House Committee on Consumer Protection and Government Effectiveness,

Marie Mills Center is a nonprofit agency in rural Tillamook County serving individuals with severe intellectual and developmental disabilities. We have existed in our community for 46 years and through much of that time those with severe disabilities that we serve have been beneficiaries of the Products of the Disabled law. Like you, we share your vision for all workers in Oregon, however our agency and many others have justifiable concerns about legislation designed to improve the employment for individuals with severe disabilities, that in the end will actually result in lost employment for our most severely disabled individuals. Below is some back ground information on the Products of the Disabled Law, the Fair Labor Standards act as it relates to employment of those with severe disabilities, and ***issues that we will face if HB 2925 or 3248 passes.***

1-The “gist” of each of these bills is to ***require QRF’s performing contracts under the Products of the Disabled Law pay severely disabled clients at minimum wage (the SEIU bill specifies prevailing rates).***

2-About 40 years ago the State of Oregon enacted the ***Products of the Disabled Law*** that required state agencies, cities, districts, counties, and municipalities to give preferential treatment for contracts performed by severely disabled individuals in vocational programs like ours. The law refers to agencies like Marie Mills Center as ***Qualified Rehabilitation Facilities (QRF)*** and are heavily regulated by the state to assure this law is not abused.

3-Being a program providing work opportunity for the severely disabled we and others like us operate under a USDOL subminimum wage certificate under Section 14 C of the Fair Labor Standard Act (FLSA). This allows our program to pay disabled workers in our programs a commensurate rate based upon their productivity. It is not uncommon for severely disabled workers to work at productivity rates as low as 10% of that of a non-disabled worker performing that same job. Disabled workers go through periodic productivity studies to determine their productivity rates and subsequent pay rates. Our programs are rigorously regulated (and appropriately so) by the USDOL to assure that abuses of this law do not occur. Many years ago congress authorized this provision of the FLSA to enable the employment of individuals with severe disabilities.

***4-If programs like ours are required to pay minimum or prevailing wage rates to severely disabled individuals working at productivity rates significantly under the norm, work opportunities for the severely disabled will be at risk and lost.*** Nonprofit vocational programs cannot subsidize the wages of individuals with severe disabilities to bring them up to minimum or prevailing wage, and entities that we contract with for work opportunities are unlikely to increase contracts and subsidize wages of individuals with severe disabilities working at productivity rates significantly under the norm.

5-The Products of the Disabled Law has a provision that requires a QRF to recover all contract costs associated with a contract obtained under this law. ***For contracts with State agencies, Oregon DAS intercedes in the contracting process and can be instrumental in increasing a contract between a QRF and State agency to cover increased costs such as subsidizing***

***increased wages of severely disabled individuals working under a Products of the Disabled Law Contract.*** However, it is far from guaranteed that a given state agency would still contract with the QRF for those goods or services making it likely that a state agency look at other options rather than contracting with a QRF - ***there are ways for a State agency to circumvent the Products of the Disabled Law.*** With nonprofit providers like Marie Mills unable to subsidize severely disabled individuals wages up to the minimum or prevailing wage levels, some of these contracts could be lost with severely disabled individuals losing work opportunities

6-Cities, Counties, Municipalities, and Special Districts in local communities are also subject to the Products of the Disabled Law. However, ***contracts between QRF's and these entities do not have the benefit (teeth) of an Oregon DAS enforcing the Products of the Disabled Law and interceding in the contracting process.*** Contracting processes are typically handled by these local entities general manager or local governing authority. Faced with requests to increase a contract to subsidize wages of that QRF's severely disabled workers up to a minimum or prevailing wage will surely be declined. With nonprofit providers like Marie Mills unable to subsidize severely disabled individuals wages up to minimum or prevailing wage, ***these contracts will be lost and severely disabled individuals lose work opportunities.***

7- In the end, if any of these bills pass it will most surely mean lost work opportunities for severely disabled individuals that previously worked under FLSA subminimum wage certificates. For programs like Marie Mills Center in rural areas without large economic bases, that rely on Products of the Disabled contracts as a mainstay work opportunity for severely disabled clients, passage of these bills will be devastating. ***Passage of any of these bills will affect up to 20 severely disabled individuals in our program alone through reduced or lost employment.***

***8-Good intentions can have negative consequences and I fear that these bills are an example of that, simply put, the economics do not add up and will result in lost work opportunities for severely disabled individuals working well below normal productivity standards.***

***9-If passage of any of these bills is an inevitability, the bill must be provisioned to assure that State Agencies cannot circumvent their requirements and responsibilities under the Products of the Disabled law by taking contracts away from QRF's, and by faithfully renegotiating contracts with QRF's so that increased costs can be recovered by that QRF.***

***10-For Cities, Counties, Municipalities, and Special Districts in local communities that fall under the Products of the Disabled Law, given the law provides no mechanism to recover costs of subsidizing severely disabled workers wages up to minimum or prevailing wage, the only reasonable solution would be for the bill to be provisioned to continue to allow wage payments under section 14 C of the FLSA on these contracts.***

Very Truly Yours,

Ron Rush, Executive Director  
Marie Mills Center Inc.