

# House Bill 3248

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFECTIVENESS

## 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 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

1  
2 Relating to qualified nonprofit agencies for individuals with disabilities; creating new provisions;  
3 amending ORS 279.850; and declaring an emergency.

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

5 **SECTION 1. Sections 2, 4, 5, 6 and 7 of this 2015 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, in con-**  
8 **nection with a contract or agreement to provide services to a public agency, shall pay all**  
9 **employees of the qualified nonprofit agency for individuals with disabilities at a rate of wage**  
10 **that meets or exceeds a rate that the Commissioner of the Bureau of Labor and Industries**  
11 **determines in accordance with subsection (2) of this section. The qualified nonprofit agency**  
12 **for individuals with disabilities shall also comply with ORS 652.120, the provisions concerning**  
13 **wages set forth in any contract or agreement the qualified nonprofit agency for individuals**  
14 **with disabilities has with a public agency and any other applicable provision of the labor or**  
15 **occupational health and safety standards of this state. The provisions of this section control**  
16 **over any conflicting provisions in a contract or agreement between a public agency and a**  
17 **qualified nonprofit agency for individuals with disabilities.**

18 **(2) At least once each year, the commissioner shall determine the rate of wage that**  
19 **qualified nonprofit agencies for individuals with disabilities must pay employees under sub-**  
20 **section (1) of this section. The rate that the commissioner determines must equal the rate**

**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 **that the United States Secretary of Labor determines under the McNamara-O’Hara Service**  
 2 **Contract Act (41 U.S.C. 351 et seq.) and related federal regulations. The commissioner may**  
 3 **amend the rate at any time.**

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

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

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

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

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

30 (2) **At the commissioner’s request and with reasonable advance notice, a qualified**  
 31 **nonprofit agency for individuals with disabilities shall make available to the commissioner**  
 32 **for inspection during normal business hours any payroll or other records that the qualified**  
 33 **nonprofit agency for individuals with disabilities has or controls that the commissioner**  
 34 **deems necessary to determine whether the qualified nonprofit agency for individuals with**  
 35 **disabilities is complying with the provisions of section 2 (1) of this 2015 Act.**

36 (3) **The commissioner shall make the results of the fact and information gathering and**  
 37 **inspections conducted under subsections (1) and (2) available to the Oregon Department of**  
 38 **Administrative Services, which shall provide the results to public agencies that receive the**  
 39 **list of sources or potential sources of products and services the department establishes un-**  
 40 **der ORS 279.845 (2).**

41 (4) **If the commissioner finds that a qualified nonprofit agency for individuals with disa-**  
 42 **abilities violates the provisions of section 2 (1) of this 2015 Act more than three times in a**  
 43 **calendar year, the commissioner shall notify the Director of the Oregon Department of Ad-**  
 44 **ministrative Services, who shall remove the qualified nonprofit agency for individuals with**  
 45 **disabilities from the list the department establishes under ORS 279.845 (2).**

**SECTION 5.** If a public agency terminates a contract with a qualified nonprofit agency for individuals with disabilities and enters into a new contract with a second qualified nonprofit agency for individuals with disabilities, the public agency shall, in the new contract, provide that the second qualified nonprofit agency for individuals with disabilities must, during a period that ends 60 days after the effective date of the termination, offer employment to individuals with disabilities who performed work under the contract that the public agency terminated. The second qualified nonprofit agency for individuals with disabilities may require an individual with a disability whom the second qualified nonprofit agency for individuals with disabilities hires under the circumstances described in this section to undergo the hiring procedures and demonstrate during a probationary period the qualifications that the second qualified nonprofit agency for individuals with disabilities establishes for new hires.

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

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

(2) The commissioner shall pay the moneys the commissioner receives under this section into the State Treasury. The State Treasurer shall credit the moneys to the QRF Labor Standards Enforcement Account established in section 7 of this 2015 Act.

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

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

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

279.850. (1)(a) Except as provided in paragraphs (b) and (c) of this subsection, *[If any]* a public agency **that** intends to procure *[any]* a product or service on the procurement list **that the Oregon Department of Administrative Services established under ORS 279.845***[, that public agency]* shall, in accordance with **the department's** rules *[of the Oregon Department of Administrative Services]*, procure *[such]* **the** product or service*[,]* at the price *[established by]* the department **establishes***[,]* from a qualified nonprofit agency for individuals with disabilities, provided **that** the product or service is of the appropriate specifications and is available within the period *[required by that]* **the** public agency **requires**.

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

(A) None of the qualified nonprofit agencies for individuals with disabilities on the procurement list the department provides to the public agency have complied with the provisions of section 2 (1) of this 2015 Act or with any applicable local ordinance or resolution

1 that governs labor standards; and

2 (B) The contractor or vendor from which the public agency procures the product or  
 3 service offers employment to employees of any qualified nonprofit agency for individuals with  
 4 disabilities from which the public agency would have procured the product or service but for  
 5 the failure of the qualified nonprofit agency for individuals with disabilities to comply with  
 6 section 2 (1) of this 2015 Act or with an applicable local ordinance or resolution.

7 (c) A public agency may give preference to a qualified nonprofit agency for individuals  
 8 with disabilities that demonstrates, better than do alternative choices, that the qualified  
 9 nonprofit agency for individuals with disabilities:

10 (A) Provides wages, fringe benefits, pensions or other retirement arrangements, health  
 11 care and alternative dispute resolution services that are substantially better than average;  
 12 and

13 (B) Complies with the requirements set forth in section 2 (1) of this 2015 Act and with  
 14 any applicable local ordinance or resolution that governs labor standards.

15 (2) In furthering the purposes of ORS 279.835 to 279.855, 279A.025 (4) and 279C.335, *[it is the*  
 16 *intent of]* the Legislative Assembly **intends** *[that there be close cooperation between]* that the de-  
 17 partment, public *[contracting]* agencies and qualified nonprofit agencies for individuals with disabil-  
 18 ities **cooperate closely**. The department on behalf of public *[contracting]* agencies and qualified  
 19 nonprofit agencies for individuals with disabilities *[is authorized to]* **may** enter into *[such]* contrac-  
 20 tual agreements, cooperative working relationships or other arrangements *[as may be determined to*  
 21 *be]* **that are** necessary *[for effective coordination and efficient realization of]* **to effectively coordi-**  
 22 **nate and efficiently realize** the objectives of ORS 279.835 to 279.855, 279A.025 (4) and 279C.335 and  
 23 any other law *[requiring]* **that governs** a procurement of products or services.

24 **SECTION 9.** Sections 2, 4, 5, 6 and 7 of this 2015 Act and the amendments to ORS 279.850  
 25 by section 8 of this 2015 Act apply to contracts into which a public agency enters on and after  
 26 the operative date specified in section 10 of this 2015 Act.

27 **SECTION 10.** (1) Sections 2, 4, 5, 6 and 7 of this 2015 Act and the amendments to ORS  
 28 279.850 by section 8 of this 2015 Act become operative January 1, 2016.

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

31 (3) The Director of the Oregon Department of Administrative Services may adopt rules  
 32 and take any other action before the operative date specified in subsection (1) of this section  
 33 that is necessary to enable the director, on and after the operative date specified in sub-  
 34 section (1) of this section, to exercise all of the duties, functions and powers conferred on  
 35 the director by sections 2, 4, 5, 6 and 7 of this 2015 Act and the amendments to ORS 279.850  
 36 by section 8 of this 2015 Act.

37 **SECTION 11.** This 2015 Act being necessary for the immediate preservation of the public  
 38 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect  
 39 on its passage.