



## **ABOUT SB 494 w/ -1 Amendment**

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*\*ORA provides provide residential and employment services for individuals with intellectual, developmental or other disabilities.*

### **Background:**

A Qualified Rehabilitation Facility (QRF) is an Oregon nonprofit organization that puts Oregonians with disabilities to work. They assist the employment choices of persons with disabilities by providing support, accommodations, on the job training and most importantly jobs! QRF's partner with Local and State Government to provide employment opportunities for people with disabilities. For nearly 40 years, the QRF Program has been a positive force in Oregon. The training and accommodations provided by QRFs have translated into thousands of jobs for Oregonians with disabilities and unlocked independence that they otherwise would not have had.

There are a lot of stakeholders involved and impacted by this proposed legislation and these parties have been active at the negotiation table. SB 494 with the -1 Amendment represents a consensus bill that will:

1. **Section 4, 5: Update language in the Products of Individuals with Disabilities Law to better align QRFs with the state's policy of Employment First** for people with disabilities.
  - Terms like "facility" and "sheltered workshop" are not in keeping with the preferred employment outcomes of Executive Order 15-01, nor are they in step with the vast majority of jobs currently offered through the QRF Program. Language in ORS 279.835-.855 should be updated to better reflect current employment policy and practice.
2. **Section 4: Improve community integration** for people with disabilities who work for QRFs. This is the "Direct Labor Percentage" requirement.
  - QRFs are currently required to demonstrate that 75% of their direct labor hours are performed by people with certified disabilities. This requirement inhibits the ability of QRFs to find community, integrated jobs, which is the preferred employment outcome for all individuals with disabilities. Lowering this requirement to 65% (and eventually 60%) would give QRFs more flexibility in creating such opportunities. The amendment also aligns this requirement with the federal ratio if it is lowered.
3. **Section 2: Eliminate the "subminimum wage" and phases in improved wages** for people with disabilities, guaranteeing they are paid at least the state minimum wage by 2023 and eliminates entirely the sub-minimum wage.
  - See below scheduled phase-in.

4. **Section 6: Encourage that DAS promote and encourage Agency compliance with the QRF Program.**
- To promote the employment of people with disabilities, the law empowers Oregon Public Agencies to negotiate directly for normal business purchases with QRFs. DAS determines the price and which goods and services are suitable for purchase through the law. The result leverages the purchasing power of Public Agencies to do public good.
5. **Section 7: Insert new “Retention” Language to protect workers:** by ensuring that when contracts exchange hands, the workforce is protected in the janitorial, security and landscaping contracts by clarifying existing law - ORS 279.853. The -1 will extend successor provisions to all successor contractors, including the private sector; requires non-QRF successors to offer employment to all individuals, expands application of successor provision to include any nonrenewal of a contract, whether that decision was made by the QRF or the Agency (current statute only applies when the Agency terminates a contract); and eliminates requirement that the successor contractor offer employment to supervisors and managers.

Date	Standard	Portland Metro	Nonurban Counties	QRF Proposal	Direct Workforce %
July 1, 2019	\$11.25	\$12.50	\$11.00		65%
July 1, 2020	\$12.00	\$13.25	\$11.50	\$9.25	65%
July 1, 2021	\$12.75	\$14.00	\$12.00	\$10.75	60%
July 1, 2022	\$13.50	\$14.75	\$12.50	\$12.50	60%
July 1, 2023	CPI Increase	\$1.25 over the Standard Wage Rate	\$1.00 less the Standard Wage Rate	Regional Wage	60%*

*\*Or federal ratio if lower.*

# Senate Bill 494

Sponsored by Senator GELSER, Representative PILUSO (Pre-session 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 employers who are authorized to pay subminimum wages to individuals with disabilities to pay certain wage rates until June 30, 2023. Requires employers to pay individuals with disabilities at minimum wage rate by July 1, 2023.

Removes individuals with disabilities from category of persons for whom employers may pay subminimum wage.

Lowers percentage of work hours of direct labor required for nonprofit organization to meet definition of "qualified nonprofit agency for individuals with disabilities."

Requires Oregon Department of Administrative Services to promote public agency compliance with requirements and objectives of provisions regarding qualified nonprofit agencies for individuals with disabilities.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to employment of individuals with disabilities; creating new provisions; amending ORS  
3 279.835, 279.840, 279.845 and 653.030; and ~~prescribing~~ **279.853** prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 653.010 to**  
6 **653.261.**

7 **SECTION 2. (1) An employer who is authorized to employ individuals with disabilities at**  
8 **subminimum wage pursuant to a special certificate issued under 29 U.S.C. 214(c) or in ac-**  
9 **cordance with rules under ORS 653.030 or of the Department of Human Services may not**  
10 **employ or agree to employ individuals with disabilities at an hourly rate lower than:**

11 (a) **From July 1, 2020, to June 30, 2021, \$9.25.**

12 (b) **From July 1, 2021, to June 30, 2022, \$10.75.**

13 (c) **From July 1, 2022, to June 30, 2023, \$12.50.**

14 (2) **After June 30, 2023, an employer who is authorized to employ individuals with disa-**  
15 **bilities at subminimum wage pursuant to a special certificate issued under 29 U.S.C. 214(c)**  
16 **or in accordance with rules under ORS 653.030 or of the Department of Human Services may**  
17 **not employ or agree to employ individuals with disabilities at a rate lower than the hourly**  
18 **rate required under ORS 653.025.**

19 **SECTION 3. ORS 653.030 is amended to read:**

20 653.030. The Commissioner of the Bureau of Labor and Industries shall issue rules prescribing  
21 the employment of other types of persons at fixed minimum hourly wage rates lower than the mini-  
22 mum wage rate required by ORS 653.025, when the commissioner has determined that the applica-  
23 tion of ORS 653.025 would substantially curtail opportunities for employment for specific types of  
24 persons. The types of persons for whom a minimum hourly wage rate may be set are limited to  
25 persons [*with mental or physical disabilities* or] who are student-learners, as defined in ORS 653.070.

26 **SECTION 4. ORS 279.835 is amended to read:**

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.

279.835. As used in ORS 279.835 to 279.855:

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

(2) "Direct labor" includes *[all work required for preparation, processing and packing]* all hours directly related to the performance of a service or manufacture of a product, but not supervision, administration, inspection and shipping.

(3) "Disability" means a physical or mental impairment that substantially limits one or more major life activities.

(4) "Individual with a disability" means an individual who, because of the nature of disabilities, *[is not able to participate fully in competitive employment, and for whom specialized employment opportunities must be provided]* relies upon specialized employment services to find, secure and maintain employment.

(5) "Public agency" or "public contracting agency" means a public agency of Oregon or any political subdivision thereof authorized to provide public contracting services, or a public body created by intergovernmental agreement.

(6) "Qualified nonprofit agency for individuals with disabilities" means an organization: (A) 75 percent of the work hours of direct labor required for the manufacture or provision of the products or services during a fiscal year that begins on or before June 30, 2019. (B) 65 percent of the work hours of direct labor required for the manufacture or provision of the products or services during a fiscal year that begins on or after July 1, 2019, and before June 30, 2021. (C) 60 percent of the work hours of direct labor required for the manufacture or provision of the products or services, or the federal ratio, whichever is lower, during a fiscal year that begins on or after July 1, 2021.

(7) "Qualified nonprofit agency for individuals with disabilities" means an organization: (a) Organized under the laws of the United States of America for the purpose of providing training or employment for individuals with disabilities; (b) That complies with any applicable occupational safety and health laws of the United States [or] and of this state; and

(c) That complies with any applicable occupational safety and health laws of the United States [or] and of this state; and

~~(c) That in the manufacture of products and in the provision of services, whether or not the products or services are procured under ORS 279.835 to 279.855, during the fiscal year employs individuals with disabilities for not less than [75] 51 percent of the work hours of direct labor required for the manufacture or provision of the products or services.~~

**SECTION 5.** ORS 279.840 is amended to read:

279.840. The purpose of ORS 279.835 to 279.855, 279A.025 (4) and 279C.335 is to further the policy of this state to encourage and assist individuals with disabilities to achieve maximum personal independence within their communities through *[useful and]* productive gainful employment by assuring an expanded and constant market for *[sheltered workshop and activity center]* products and services produced by qualified nonprofit agencies for individuals with disabilities, thereby enhancing their dignity and capacity for self-support *[and minimizing their dependence on welfare and need for costly institutionalization]*.

**SECTION 6.** ORS 279.845 is amended to read:

279.845. (1) It is the duty of the Oregon Department of Administrative Services to:

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

(b) To revise such prices from time to time in accordance with changing cost factors; *[and]*

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

(d) To promote the requirements under ORS 279.835 to 279.855.

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

6 (3) The department may not delegate any duty imposed under this section to any person or  
 7 public agency outside of the department.

8 **SECTION 7.**<sup>8</sup> This 2019 Act takes effect on the 91st day after the date on which the 2019  
 9 regular session of the Eightieth Legislative Assembly adjourns sine die.

10 **SECTION 7. ORS 279.853 is amended to read:**

**“279.853. (1)(a) [If a public agency terminates a contract for services with a qualified nonprofit agency for individuals with disabilities and the public agency enters into a new contract for services with a second qualified nonprofit agency for individuals with disabilities, the public agency shall provide in the new contract that the second qualified nonprofit agency for individuals with disabilities must, during a period that ends 90 days after the date on which the public agency enters into the new contract, offer employment to the individuals with disabilities who performed work under the terminated contract at wages and, for individuals with disabilities who work 28 hours or more per week, with health benefits that are as favorable to the individuals with disabilities as, or more favorable to the individuals with disabilities than, the wages and health benefits that the individuals with disabilities had under the terminated contract. The second qualified nonprofit agency for individuals with disabilities may require an individual with a disability whom the second qualified nonprofit agency for individuals 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.] If a public agency or a qualified nonprofit agency for individuals with disabilities terminates a contract procured under ORS 279.850 for janitorial services, grounds maintenance services or security services and the public agency enters into a new contract for the same services, the public agency shall provide in the new contract that the successor service provider, during a period that ends 90 days after the date on which the public agency enters into the new contract, offer employment to the individuals with disabilities who worked 28 hours or more per week under the terminated contract at the time the contract terminated, at wages and with health benefits as favorable as, or more favorable than, the wages and health benefits the individuals with disabilities received under the terminated contract.**

**(b) If the successor service provider under paragraph (a) of this subsection is not a qualified nonprofit agency for individuals with disabilities, the public agency shall provide in the new contract that the successor service provider, during a period that ends 90 days after the date on which the public agency enters into the new contract, offer employment to all individuals who worked 28 hours or more per week under the terminated contract at the time the contract terminated, except managers and supervisors, at wages and with health benefits as favorable as, or more favorable than, the wages and health benefits the individuals received under the terminated contract.**

**(2) A successor service provider that provides the same services under a new contract as provided under the terminated contract may require an individual whom the successor service provider hires under subsection (1) of this section to undergo the hiring procedures and demonstrate during a probationary period the qualifications that the successor service provider establishes for new hires.**