

A-Engrossed
Senate Bill 494

Ordered by the Senate April 10
Including Senate Amendments dated April 10

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.

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, **over period of time**, 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.

Modifies conditions required in contract between public agency or qualified nonprofit agency for individuals with disabilities and successor service provider.

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, 279.853 and 653.030; and 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-

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 tion of ORS 653.025 would substantially curtail opportunities for employment for specific types of
2 persons. The types of persons for whom a minimum hourly wage rate may be set are limited to
3 persons *[with mental or physical disabilities or]* who are student-learners, as defined in ORS 653.070.

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

5 279.835. As used in ORS 279.835 to 279.855:

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

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

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

12 [(3)] (4) "Individual with a disability" means an individual who, because of the nature of disa-
13 bilities, *[is not able to participate fully in competitive employment, and for whom specialized employ-*
14 *ment opportunities must be provided]* **relies upon specialized employment services to find, secure**
15 **and maintain employment.**

16 [(4)] (5) "Public agency" or "public contracting agency" means any agency of the State of
17 Oregon or any political subdivision thereof authorized by law to enter into public contracts and any
18 public body created by intergovernmental agreement.

19 [(5)] (6) "Qualified nonprofit agency for individuals with disabilities" means a nonprofit *[activity*
20 *center or rehabilitation facility]* **organization:**

21 (a) Organized under the laws of the United States or of this state and operated *[in the interest*
22 *of]* **to provide training or employment for** individuals with disabilities **in this state**, and the net
23 income of which does not inure in whole or in part to the benefit of any shareholder or other indi-
24 vidual;

25 (b) That complies with any applicable occupational health and safety standard required by the
26 laws of the United States *[or]* **and** of this state; and

27 *[(c) That in the manufacture of products and in the provision of services, whether or not the pro-*
28 *ducts or services are procured under ORS 279.835 to 279.855, during the fiscal year employs individ-*
29 *uals with disabilities for not less than 75 percent of the work hours of direct labor required for the*
30 *manufacture or provision of the products or services.]*

31 **(c) That in the manufacture of products and in the provision of services, whether or not**
32 **the products or services are procured under ORS 279.835 to 279.855, employs individuals with**
33 **disabilities for not less than:**

34 **(A) 75 percent of the work hours of direct labor required for the manufacture or pro-**
35 **vision of the products or services during a fiscal year that begins on or before June 30, 2019.**

36 **(B) 65 percent of the work hours of direct labor required for the manufacture or pro-**
37 **vision of the products or services during a fiscal year that begins on or after July 1, 2019,**
38 **and before June 30, 2021.**

39 **(C) 60 percent of the work hours of direct labor required for the manufacture or pro-**
40 **vision of the products or services, or the federal ratio, whichever is lower, during a fiscal**
41 **year that begins on or after July 1, 2021.**

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

43 279.840. The purpose of ORS 279.835 to 279.855, 279A.025 (4) and 279C.335 is to further the pol-
44 icy of this state to encourage and assist individuals with disabilities to achieve maximum personal
45 independence **within their communities** through *[useful and]* productive gainful employment by

1 assuring an expanded and constant market for *[sheltered workshop and activity center]* products and
2 services **produced by qualified nonprofit agencies for individuals with disabilities**, thereby en-
3 hancing their dignity and capacity for self-support *[and minimizing their dependence on welfare and*
4 *need for costly institutionalization]*.

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

6 279.845. (1) It is the duty of the Oregon Department of Administrative Services to:

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

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

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

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

16 (2) The department shall establish and publish a list of sources or potential sources of products
17 produced by any qualified nonprofit agency for individuals with disabilities and the services provided
18 by any such agency¹, *which* **that** the department determines are suitable for procurement by public
19 agencies pursuant to ORS 279.835 to 279.855, 279A.025 (4) and 279C.335. This procurement list and
20 revisions thereof shall be distributed to all public purchasing officers.

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

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

24 279.853. **(1)(a)** *[If a public agency terminates a contract for services with a qualified nonprofit*
25 *agency for individuals with disabilities and the public agency enters into a new contract for services*
26 *with a second qualified nonprofit agency for individuals with disabilities, the public agency shall pro-*
27 *vide in the new contract that the second qualified nonprofit agency for individuals with disabilities*
28 *must, during a period that ends 90 days after the date on which the public agency enters into the new*
29 *contract, offer employment to the individuals with disabilities who performed work under the termi-*
30 *nated contract at wages and, for individuals with disabilities who work 28 hours or more per week,*
31 *with health benefits that are as favorable to the individuals with disabilities as, or more favorable to*
32 *the individuals with disabilities than, the wages and health benefits that the individuals with disabili-*
33 *ties had under the terminated contract. The second qualified nonprofit agency for individuals with*
34 *disabilities may require an individual with a disability whom the second qualified nonprofit agency for*
35 *individuals hires under the circumstances described in this section to undergo the hiring procedures*
36 *and demonstrate during a probationary period the qualifications that the second qualified nonprofit*
37 *agency for individuals with disabilities establishes for new hires.] **If a public agency or a qualified***
38 **nonprofit agency for individuals with disabilities terminates a contract procured under ORS**
39 **279.850 for janitorial services, grounds maintenance services or security services and the**
40 **public agency enters into a new contract for the same services, the public agency shall pro-**
41 **vide in the new contract that the successor service provider, during a period that ends 90**
42 **days after the date on which the public agency enters into the new contract, offer employ-**
43 **ment to the individuals with disabilities who worked 28 hours or more per week under the**
44 **terminated contract at the time the contract terminated, at wages and with health benefits**
45 **as favorable as, or more favorable than, the wages and health benefits the individuals with**

1 **disabilities received under the terminated contract.**

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

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

15 **SECTION 8. This 2019 Act takes effect on the 91st day after the date on which the 2019**
16 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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