

D R A F T

SUMMARY

Requires Oregon Department of Administrative Services to periodically conduct performance audit of public agencies to determine compliance with laws that require procurements from qualified nonprofit agencies for individuals with disabilities. Requires department to publish results of audit on department's website and to certify compliance or failure to comply. Permits department to impose fines for noncompliance.

Requires public agencies that terminate or decline to renew contracts with qualified nonprofit agencies for individuals with disabilities to require contractor to submit to department in writing detailed information about pay rate and benefits contractor provided to employees. Requires department to supervise transitions between contracts with qualified nonprofit agencies for individuals with disabilities that public agencies terminate or decline to renew and new contracts with successor service providers. Requires department to impose fines for failures to comply with or violations of requirements that apply to such transitions.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to requirements for procurements from qualified nonprofit agencies
3 for individuals with disabilities; creating new provisions; amending ORS
4 279.850 and 279.853; and prescribing an effective date.

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

6 **SECTION 1.** ORS 279.850 is amended to read:

7 279.850. (1)(a) Except as provided in paragraph (b) of this subsection and
8 subject to paragraph (c) of this subsection, a public agency that intends to
9 procure a product or service on the procurement list that the Oregon De-
10 partment of Administrative Services established under ORS 279.845 shall, in
11 accordance with the department's rules, procure the product or service at the

1 price the department establishes from a qualified nonprofit agency for indi-
2 viduals with disabilities, provided that the product or service is of the ap-
3 propriate specifications and is available within the period the public agency
4 requires.

5 (b) A public agency may procure a product or service that is on the pro-
6 curement list described in paragraph (a) of this subsection from a person
7 other than a qualified nonprofit agency for individuals with disabilities if:

8 (A) All of the qualified nonprofit agencies for individuals with disabilities
9 on the procurement list that applies to the public agency have a record in
10 the previous three years of repeatedly violating, or are not now in compli-
11 ance with, applicable local ordinances or resolutions that govern labor
12 standards; and

13 (B) The person, for a period of 90 days after the person enters into an
14 agreement with the public agency, offers to employ the employees of a qual-
15 ified nonprofit agency for individuals with disabilities from which the public
16 agency would have procured the product or service but for the failure of the
17 qualified nonprofit agency for individuals with disabilities to comply with
18 an applicable local ordinance or resolution that governs labor standards.

19 (c) If a public agency may choose to procure a product or service from
20 more than one qualified nonprofit agency for individuals with disabilities,
21 the public agency may give a preference to the qualified nonprofit agency for
22 individuals with disabilities that best demonstrates that the qualified
23 nonprofit agency for individuals with disabilities:

24 (A) Complies with all applicable local ordinances and resolutions that
25 govern labor standards; and

26 (B) Provides wages, health care benefits, alternative dispute resolution
27 services and pension or other retirement arrangements that, in the aggregate,
28 are better than the average package of wages, health care benefits, alterna-
29 tive dispute resolution services and pension or other retirement arrange-
30 ments that private employers provide to employees that perform the same or
31 similar job duties:

1 (i) In the same industry in which the qualified nonprofit agency for indi-
2 viduals with disabilities engages; and

3 (ii) In the county in which the qualified nonprofit agency for individuals
4 with disabilities will deliver the product or perform the service.

5 (2)(a) A public agency may require in any agreement with a qualified
6 nonprofit agency for individuals with disabilities under ORS 279.835 to
7 279.855 that the qualified nonprofit agency for individuals with disabilities
8 comply with applicable local ordinances or resolutions that govern labor
9 standards.

10 (b) A public agency may disqualify a qualified nonprofit agency for indi-
11 viduals with disabilities from entering into an agreement with the public
12 agency under ORS 279.835 to 279.855 for a period of three years if the public
13 agency:

14 (A) Determines that the qualified nonprofit agency for individuals with
15 disabilities repeatedly violated local ordinances or resolutions that govern
16 labor standards during the term of an agreement with the public agency
17 under ORS 279.835 to 279.855; or

18 (B) Finds that the qualified nonprofit agency for individuals with disa-
19 bilities has a record in the previous three years of repeatedly violating ap-
20 plicable local ordinances or resolutions that govern labor standards.

21 (3) In furthering the purposes of ORS 279.835 to 279.855, 279A.025 (4) and
22 279C.335, the Legislative Assembly intends that the department, public
23 agencies and qualified nonprofit agencies for individuals with disabilities
24 cooperate closely. The department on behalf of public agencies and qualified
25 nonprofit agencies for individuals with disabilities may enter into contrac-
26 tual agreements, cooperative working relationships or other arrangements
27 that are necessary to effectively coordinate and efficiently realize the objec-
28 tives of ORS 279.835 to 279.855, 279A.025 (4) and 279C.335 and any other law
29 that governs a procurement of products or services.

30 **(4)(a) The department shall conduct a periodic performance audit**
31 **of public agency procurement to ensure that public agencies are com-**

1 **plying with the requirements of ORS 279.835 to 279.855, 279A.025 (4) and**
2 **279C.335. The department may by contract delegate to another agency**
3 **or to a private contractor with appropriate experience the authority**
4 **to conduct the audits required under this subsection. The department**
5 **shall ensure that each public agency that is subject to the require-**
6 **ments of this section undergoes an audit least once every five years.**

7 **(b) Each public agency shall provide the department, at the**
8 **department's request, with information the department determines is**
9 **necessary to conduct the audit required under this subsection.**

10 **(c) The department shall publish the results of each performance**
11 **audit on the department's website and, upon concluding the audit,**
12 **shall in writing either certify that the public agency has complied with**
13 **the requirements of ORS 279.835 to 279.855, 279A.025 (4) and 279C.335**
14 **or make a finding of noncompliance.**

15 **(5) The department, upon finding noncompliance under subsection**
16 **(4)(c) of this section, may impose a fine upon the noncompliant public**
17 **agency in an amount the department specifies by rule. The department**
18 **shall deposit the proceeds of any such fine into the State Treasury to**
19 **the credit of the General Fund.**

20 **(6) The department may adopt rules necessary to carry out the**
21 **department's duties under this section.**

22 **SECTION 2. ORS 279.853 is amended to read:**

23 **279.853. (1)(a) If a public agency or a qualified nonprofit agency for indi-**
24 **viduals with disabilities terminates or declines to renew a contract procured**
25 **under ORS 279.850 for janitorial services, grounds maintenance services or**
26 **security services and the public agency enters into a new contract for the**
27 **same services, the public agency shall provide in the new contract that the**
28 **successor service provider, during a period that ends 90 days after the date**
29 **on which the public agency enters into the new contract, offer employment**
30 **to the individuals with disabilities who worked 28 hours or more per week**
31 **under the terminated or nonrenewed contract at the time the contract ended,**

1 at wages and with health benefits as favorable as, or more favorable than,
2 the wages and health benefits the individuals with disabilities received under
3 the terminated or nonrenewed contract.

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

14 (2) A successor service provider that provides the same services under a
15 new contract as provided under the terminated or nonrenewed contract may
16 require an individual whom the successor service provider hires under sub-
17 section (1) of this section to undergo the hiring procedures and demonstrate
18 during a probationary period the qualifications that the successor service
19 provider establishes for new hires.

20 **(3) To ensure that a successor service provider pays wages and**
21 **provides health benefits as favorable or more favorable than the wages**
22 **and health benefits that the contractor paid or provided under a con-**
23 **tract a public agency procured under ORS 279.850, the public agency,**
24 **upon terminating or declining to renew the contract, shall require in**
25 **writing that the contractor submit in writing to the Oregon Depart-**
26 **ment of Administrative Services:**

27 **(a) The hourly rate or salary the contractor paid to each employee**
28 **the successor service provider will continue to employ;**

29 **(b) A detailed summary of benefits and coverages and a summary**
30 **plan description for any benefits the contractor provided to employees;**
31 **and**

1 (c) Any other information the department deems necessary to
2 specify the minimum wage rate and benefits that a successor service
3 provider must pay or provide under a new contract in order to ensure
4 that wages and benefits under the new contract are as favorable or
5 more favorable than the wages and benefits the contractor paid or
6 provided under the contract that the public agency terminated or de-
7 clined to renew.

8 (4) The department, in accordance with the requirements of this
9 section, shall supervise and approve all transitions between contracts
10 that public agencies have terminated or declined to renew and new
11 contracts. The department shall determine whether the public agency,
12 the contractor and the successor service provider complied with the
13 requirements of this section and, if the department determines that
14 compliance has occurred, shall certify the compliance in writing.

15 (5) The department shall impose a fine of not more than \$5,000 upon
16 a public agency, a contractor or a successor service provider, as ap-
17 propriate, for each of the public agency's, the contractor's or the
18 successor service provider's failures to comply with or violations of the
19 requirements of this section. The department shall deposit the pro-
20 ceeds of all such fines into the State Treasury to the credit of the
21 General Fund.

22 (6) The department may adopt rules necessary to carry out the
23 department's duties under this section.

24 SECTION 3. (1) The amendments to ORS 279.850 and 279.853 by
25 sections 1 and 2 of this 2022 Act become operative on January 1, 2023.

26 (2) The Oregon Department of Administrative Services may adopt
27 rules and take any other action before the operative date specified in
28 subsection (1) of this section that is necessary to enable the depart-
29 ment, on and after the operative date specified in subsection (1) of this
30 section, to undertake and perform the duties, functions and powers
31 conferred on the department by the amendments to ORS 279.850 and

1 **279.853 by sections 1 and 2 of this 2022 Act.**

2 **SECTION 4. This 2022 Act takes effect on the 91st day after the date**
3 **on which the 2022 regular session of the Eighty-first Legislative As-**
4 **sembly adjourns sine die.**

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