

House Bill 4019

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor for Service Employees International Union (SEIU))

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 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 for individuals with
3 disabilities; creating new provisions; amending ORS 279.850 and 279.853; and prescribing an ef-
4 fective 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 subject to paragraph
8 (c) of this subsection, a public agency that intends to procure a product or service on the procure-
9 ment list that the Oregon Department of Administrative Services established under ORS 279.845
10 shall, in accordance with the department's rules, procure the product or service at the price the
11 department establishes from a qualified nonprofit agency for individuals with disabilities, provided
12 that the product or service is of the appropriate specifications and is available within the period the
13 public agency requires.

14 (b) A public agency may procure a product or service that is on the procurement list described
15 in paragraph (a) of this subsection from a person other than a qualified nonprofit agency for indi-
16 viduals with disabilities if:

17 (A) All of the qualified nonprofit agencies for individuals with disabilities on the procurement
18 list that applies to the public agency have a record in the previous three years of repeatedly vio-
19 lating, or are not now in compliance with, applicable local ordinances or resolutions that govern
20 labor standards; and

21 (B) The person, for a period of 90 days after the person enters into an agreement with the public
22 agency, offers to employ the employees of a qualified nonprofit agency for individuals with disabili-
23 ties from which the public agency would have procured the product or service but for the failure
24 of the qualified nonprofit agency for individuals with disabilities to comply with an applicable local

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 ordinance or resolution that governs labor standards.

2 (c) If a public agency may choose to procure a product or service from more than one qualified
 3 nonprofit agency for individuals with disabilities, the public agency may give a preference to the
 4 qualified nonprofit agency for individuals with disabilities that best demonstrates that the qualified
 5 nonprofit agency for individuals with disabilities:

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

8 (B) Provides wages, health care benefits, alternative dispute resolution services and pension or
 9 other retirement arrangements that, in the aggregate, are better than the average package of wages,
 10 health care benefits, alternative dispute resolution services and pension or other retirement ar-
 11 rangements that private employers provide to employees that perform the same or similar job duties:

12 (i) In the same industry in which the qualified nonprofit agency for individuals with disabilities
 13 engages; and

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

16 (2)(a) A public agency may require in any agreement with a qualified nonprofit agency for indi-
 17 viduals with disabilities under ORS 279.835 to 279.855 that the qualified nonprofit agency for indi-
 18 viduals with disabilities comply with applicable local ordinances or resolutions that govern labor
 19 standards.

20 (b) A public agency may disqualify a qualified nonprofit agency for individuals with disabilities
 21 from entering into an agreement with the public agency under ORS 279.835 to 279.855 for a period
 22 of three years if the public agency:

23 (A) Determines that the qualified nonprofit agency for individuals with disabilities repeatedly
 24 violated local ordinances or resolutions that govern labor standards during the term of an agree-
 25 ment with the public agency under ORS 279.835 to 279.855; or

26 (B) Finds that the qualified nonprofit agency for individuals with disabilities has a record in the
 27 previous three years of repeatedly violating applicable local ordinances or resolutions that govern
 28 labor standards.

29 (3) In furthering the purposes of ORS 279.835 to 279.855, 279A.025 (4) and 279C.335, the Legis-
 30 lative Assembly intends that the department, public agencies and qualified nonprofit agencies for
 31 individuals with disabilities cooperate closely. The department on behalf of public agencies and
 32 qualified nonprofit agencies for individuals with disabilities may enter into contractual agreements,
 33 cooperative working relationships or other arrangements that are necessary to effectively coordi-
 34 nate and efficiently realize the objectives of ORS 279.835 to 279.855, 279A.025 (4) and 279C.335 and
 35 any other law that governs a procurement of products or services.

36 **(4)(a) The department shall conduct a periodic performance audit of public agency pro-**
 37 **urement to ensure that public agencies are complying with the requirements of ORS 279.835**
 38 **to 279.855, 279A.025 (4) and 279C.335. The department may by contract delegate to another**
 39 **agency or to a private contractor with appropriate experience the authority to conduct the**
 40 **audits required under this subsection. The department shall ensure that each public agency**
 41 **that is subject to the requirements of this section undergoes an audit least once every five**
 42 **years.**

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

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

5 (5) The department, upon finding noncompliance under subsection (4)(c) of this section,
 6 may impose a fine upon the noncompliant public agency in an amount the department spec-
 7 ifies by rule. The department shall deposit the proceeds of any such fine into the State
 8 Treasury to the credit of the General Fund.

9 (6) The department may adopt rules necessary to carry out the department's duties un-
 10 der this section.

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

12 279.853. (1)(a) If a public agency or a qualified nonprofit agency for individuals with disabilities
 13 terminates or declines to renew a contract procured under ORS 279.850 for janitorial services,
 14 grounds maintenance services or security services and the public agency enters into a new contract
 15 for the same services, the public agency shall provide in the new contract that the successor service
 16 provider, during a period that ends 90 days after the date on which the public agency enters into
 17 the new contract, offer employment to the individuals with disabilities who worked 28 hours or more
 18 per week under the terminated or nonrenewed contract at the time the contract ended, at wages
 19 and with health benefits as favorable as, or more favorable than, the wages and health benefits the
 20 individuals with disabilities received under the terminated or nonrenewed contract.

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

29 (2) A successor service provider that provides the same services under a new contract as pro-
 30 vided under the terminated or nonrenewed contract may require an individual whom the successor
 31 service provider hires under subsection (1) of this section to undergo the hiring procedures and
 32 demonstrate during a probationary period the qualifications that the successor service provider es-
 33 tablishes for new hires.

34 (3) **To ensure that a successor service provider pays wages and provides health benefits**
 35 **as favorable or more favorable than the wages and health benefits that the contractor paid**
 36 **or provided under a contract a public agency procured under ORS 279.850, the public agency,**
 37 **upon terminating or declining to renew the contract, shall require in writing that the con-**
 38 **tractor submit in writing to the Oregon Department of Administrative Services:**

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

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

43 (c) **Any other information the department deems necessary to specify the minimum wage**
 44 **rate and benefits that a successor service provider must pay or provide under a new contract**
 45 **in order to ensure that wages and benefits under the new contract are as favorable or more**

1 favorable than the wages and benefits the contractor paid or provided under the contract
2 that the public agency terminated or declined to renew.

3 (4) The department, in accordance with the requirements of this section, shall supervise
4 and approve all transitions between contracts that public agencies have terminated or de-
5 clined to renew and new contracts. The department shall determine whether the public
6 agency, the contractor and the successor service provider complied with the requirements
7 of this section and, if the department determines that compliance has occurred, shall certify
8 the compliance in writing.

9 (5) The department shall impose a fine of not more than \$5,000 upon a public agency, a
10 contractor or a successor service provider, as appropriate, for each of the public agency's,
11 the contractor's or the successor service provider's failures to comply with or violations of
12 the requirements of this section. The department shall deposit the proceeds of all such fines
13 into the State Treasury to the credit of the General Fund.

14 (6) The department may adopt rules necessary to carry out the department's duties un-
15 der this section.

16 SECTION 3. (1) The amendments to ORS 279.850 and 279.853 by sections 1 and 2 of this
17 2022 Act become operative on January 1, 2023.

18 (2) The Oregon Department of Administrative Services may adopt rules and take any
19 other action before the operative date specified in subsection (1) of this section that is nec-
20 essary to enable the department, on and after the operative date specified in subsection (1)
21 of this section, to undertake and perform the duties, functions and powers conferred on the
22 department by the amendments to ORS 279.850 and 279.853 by sections 1 and 2 of this 2022
23 Act.

24 SECTION 4. This 2022 Act takes effect on the 91st day after the date on which the 2022
25 regular session of the Eighty-first Legislative Assembly adjourns sine die.
26