

# House Bill 2661

Sponsored by Representative GAMBA (Presession 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 Oregon Department of Administrative Services to monitor public agency compliance with requirements of program to promote products and services of individuals with disabilities. Authorizes department to refer finding of pattern or practice of noncompliance to Attorney General for enforcement.

Requires department to oversee and verify compliance with requirements for public agencies to terminate a contract with a qualified nonprofit agency for individuals with disabilities and enter into a new contract for provision of same goods or services. Provides that department may remove successor service provider from list of sources of goods produced and services provided by qualified nonprofit agencies for individuals with disabilities.

Requires public agencies to request written affirmation of wage rates, summary of benefits and coverages and summary plan description for any insurance plan successor service provider provides to employees to verify compliance with requirement to offer employment and benefits to employees under previous contract that are as favorable as or more favorable than benefits available under previous contract.

Permits Attorney General to bring action to enforce compliance with Act. Permits person to bring action on person's own behalf if Attorney General declines to bring action.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to qualified nonprofit agencies for individuals with disabilities; creating new provisions;  
3 amending ORS 279.845 and 279.853; and prescribing an effective date.

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

5 **SECTION 1.** ORS 279.845 is amended to read:

6 279.845. (1) *[It is the duty of]* The Oregon Department of Administrative Services *[to]* **shall**:

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 **must** recover the cost of raw materials, labor, overhead, delivery costs and a margin held in reserve  
10 for inventory and equipment replacement;

11 (b) *[To]* Revise *[such]* **the prices described in paragraph (a) of this subsection** from time to  
12 time in accordance with changing cost factors;

13 (c) *[To]* Make such rules regarding specifications, time of delivery and other relevant matters  
14 of procedure as *[shall be]* **are** necessary to carry out the purposes of ORS 279.835 to 279.855,  
15 279A.025 (4) and 279C.335; *[and]*

16 (d) *[To]* Promote the requirements under ORS 279.835 to 279.855[.]; **and**

17 (e) **Monitor and certify each public agency for compliance with the requirements of ORS**  
18 **279.850 (1). The department shall evaluate each public agency for compliance not less than**  
19 **every three years. If the department finds that a public agency has a pattern or practice of**  
20 **not complying with the requirements of ORS 279.850 (1), the department may submit the**  
21 **department's findings to the Attorney General and request that the Attorney General seek**  
22 **compliance by negotiating an assurance of voluntary compliance or by bringing an action or**

**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 **proceeding to enforce compliance in an appropriate forum.**

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

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

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

10 279.853. (1)(a) If a public agency or a qualified nonprofit agency for individuals with disabilities  
 11 terminates or declines to renew a contract procured under ORS 279.850 for janitorial services,  
 12 grounds maintenance services or security services and the public agency enters into a new contract  
 13 for the same services, the public agency shall provide in the new contract that the successor service  
 14 provider, during a period that ends 90 days after the date on which the public agency enters into  
 15 the new contract, offer employment to the individuals with disabilities who worked 28 hours or more  
 16 per week under the terminated or nonrenewed contract at the time the contract ended, at wages  
 17 and with health benefits as favorable as, or more favorable than, the wages and health benefits the  
 18 individuals with disabilities received under the terminated or nonrenewed contract.

19 **(b) To verify that a successor service provider offers employment to individuals with**  
 20 **disabilities as described in paragraph (a) of this subsection, a public agency shall request in**  
 21 **writing that the successor service provider provide the public agency with a written affir-**  
 22 **mation that the wages the successor service provider offers are as favorable or more favor-**  
 23 **able to individuals to whom the successor service provider offers employment, along with a**  
 24 **written summary of benefits and coverages and a summary plan description for any insur-**  
 25 **ance plan the successor service provider provides to employees.**

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

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

39 **(3)(a) The Oregon Department of Administrative Services shall oversee and evaluate**  
 40 **whether a transition between a previous service provider and a successor service provider**  
 41 **under subsection (1) of this section complies with the requirements set forth in subsection**  
 42 **(1) of this section. If a public agency and the successor service provider comply with the**  
 43 **requirements, the department shall approve the public agency's new contract with the suc-**  
 44 **cessor service provider and shall provide public notice of the approval on the department's**  
 45 **website. If the department determines that the successor service provider did not comply,**

1 the public agency may not enter into the new contract unless the successor service provider  
 2 complies with the requirements within 30 days after the date of the department's determi-  
 3 nation. If the successor service provider does not comply within 30 days after the  
 4 department's determination, the public agency shall enter into negotiations for a contract  
 5 with a different successor service provider that has demonstrated compliance.

6 (b) If the department determines that the successor service provider failed to comply  
 7 with the requirements of subsection (1) of this section more than two times in a period of  
 8 three years, the department shall remove the successor service provider from the list of  
 9 sources the department establishes, publishes and distributes to public agencies under ORS  
 10 279.845 (2). The department may not reinstate the successor service provider to the list of  
 11 sources until three years after the date on which department removed the successor service  
 12 provider from the department's list of sources.

13 (4) The Attorney General, at the request of a person that claims an ascertainable harm  
 14 from a violation of the requirements of this section, may bring an action in a circuit court  
 15 of this state to seek damages or appropriate equitable relief on behalf of the person that  
 16 submitted the request. If the Attorney General declines to bring an action under this sub-  
 17 section, the person may bring an action on the person's own behalf and may seek damages  
 18 or appropriate equitable relief in a circuit court of this state. The court may award attorney  
 19 fees and costs to a person that prevails at trial and on appeal in an action under this sub-  
 20 section.

21 **SECTION 3.** The amendments to ORS 279.845 and 279.853 by sections 1 and 2 of this 2023  
 22 Act apply to contracts into which a public agency enters on and after the operative date  
 23 specified in section 4 of this 2023 Act.

24 **SECTION 4.** (1) The amendments to ORS 279.845 and 279.853 by sections 1 and 2 of this  
 25 2023 Act become operative on January 1, 2024.

26 (2) The Director of the Oregon Department of Administrative Services may adopt rules  
 27 and take any other action before the operative date specified in subsection (1) of this section  
 28 that is necessary to enable the director, on and after the operative date specified in sub-  
 29 section (1) of this section, to undertake and exercise all of the duties, functions and powers  
 30 conferred on the director by the amendments to ORS 279.845 and 279.853 by sections 1 and  
 31 2 of this 2023 Act.

32 **SECTION 5.** This 2023 Act takes effect on the 91st day after the date on which the 2023  
 33 regular session of the Eighty-second Legislative Assembly adjourns sine die.

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