



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3340

by Rep. Theresa Mah

SYNOPSIS AS INTRODUCED:

See Index

Amends the Department of Human Services Act. Contains a declaration of policy and intent. Requires the Department of Human Services, in partnership with specified State agencies, to develop and implement a plan to phase out, by July 1, 2024, authorizations under the Minimum Wage Law to pay an employee with a disability less than the minimum wage. Requires the Department to consult with specified organizations when implementing the phase-out plan. Requires the Secretary of Human Services to submit reports to the Governor and the General Assembly on the benchmarks and status of achieving the outcomes included in the phase-out plan and recommendations for funding levels or other resources necessary to implement the phase-out plan. Amends the Department of Labor Law. Prohibits the Director of Labor from authorizing a work activities center or other sheltered workshop to pay an employee who has a disability less than the minimum wage unless certain requirements are met. Amends the Illinois Council on Developmental Disabilities Law. Requires the Illinois Council on Developmental Disabilities to commission an independent study of the phase-out plan; determine whether the plans are having their intended effects; and make recommendations for possible changes in State law or policy regarding the employment of individuals with disabilities. Requires the Council to report its findings and recommendations to the Governor and the General Assembly by July 1, 2023. Amends the Minimum Wage Law. Provides that the State of Illinois shall not fund any entity that pays individuals less than the minimum wage under a certificate issued by the United States Department of Labor that authorizes Community Rehabilitation Programs to pay individuals less than the wage otherwise required for the individuals under federal law. Effective immediately, except that the provisions amending the Minimum Wage Law take effect July 1, 2024.

LRB101 10336 JLS 55442 b

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Declaration of policy and intent. Section 14(c)
5 of the Fair Labor Standards Act of 1938 allows employers to pay
6 less than the minimum wage to workers who have disabilities.
7 More than 100 Illinois entities now employ over 10,000
8 individuals with disabilities and pay those individuals a
9 subminimum wage. Among those now working for less than minimum
10 wage are people with autism, cerebral palsy, spina bifida, Down
11 syndrome, and other intellectual, developmental, and sensory
12 disabilities including blindness and deafness. The Illinois
13 Employment First Act stipulates that "competitive and
14 integrated employment shall be considered the first option when
15 serving persons with disabilities of working age".

16 Section 5. The Department of Human Services Act is amended
17 by adding Sections 1-75, 1-80, and 1-85 as follows:

18 (20 ILCS 1305/1-75 new)

19 Sec. 1-75. Phase-out plan.

20 (a) The Department, in partnership with other State
21 agencies, including the Department of Labor, the Department of
22 Healthcare and Family Services, the Department of Central

1 Management Services, the Department of Commerce and Economic
2 Opportunity, the Department of Employment Security, and the
3 State Board of Education, shall develop and implement a plan to
4 phase out, on or before July 1, 2024, authorizations under
5 Sections 5 and 10 of the Minimum Wage Law to pay an employee
6 with a disability less than the minimum wage otherwise required
7 for the employee under Illinois law.

8 (b) The phase-out plan shall include all of the following:

9 (1) Benchmarks and desired outcomes for each year of
10 the phase-out.

11 (2) A list of the resources necessary, including
12 changes to State policy or service and program
13 reimbursement rates, to ensure that individuals with
14 disabilities receive support according to the needs and
15 preferences of the individuals and in an integrated
16 setting, regardless of the nature or severity of the
17 individuals' disabilities.

18 (3) A description of alternative revenue options,
19 including non-subminimum wage programs, for holders of
20 certificates issued under Section 14(c) of the Fair Labor
21 Standards Act of 1938.

22 (4) An examination of the measures needed to improve
23 future employment and day service options for people with
24 disabilities, including recommendations for new or
25 reformulated day service strategies and approaches
26 designed to strengthen statewide capacity to assure

1 informed choice for integrated employment and integrated
2 avocational leisure and volunteer options for every
3 individual with a disability.

4 (5) A timeline and estimated costs for comprehensive
5 training and certification of individual staff in
6 supported employment and customized employment. The
7 training shall also include benefits counseling and
8 education to reduce misinformation that promotes
9 dependency and discourages income-producing work. Training
10 audiences shall include the following persons and
11 organizations:

12 (A) Counselors from the Department's Division of
13 Rehabilitation Services.

14 (B) Staff from the Department's Division of
15 Developmental Disabilities.

16 (C) Organizations affiliated with the Department's
17 Division of Rehabilitation Services or Division of
18 Developmental Disabilities that are certified to serve
19 persons with disabilities by the State or federal
20 government.

21 (D) High school special education and transition
22 staff.

23 (E) Independent Service Coordination agency staff.

24 (F) Community Work Incentives Coordinators.

25 Training content developed or approved by federal
26 agencies shall be used, if possible, including training

1 content from the following agencies:

2 (i) The Office of Disability Employment Policy in
3 the United States Department of Labor.

4 (ii) The Rehabilitation Services Administration in
5 the United States Department of Education.

6 (iii) The Administration for Community Living in
7 the United States Department of Health and Human
8 Services.

9 (iv) The Centers for Medicare and Medicaid
10 Services in the United States Department of Health and
11 Human Services.

12 (6) A proposal to modify the Business Enterprise
13 Program and the State Use Program to ensure future State
14 contracts are not awarded to entities paying workers less
15 than the minimum wage and instead are awarded to entities
16 that promote fully integrated work opportunities.

17 (7) Application for and use of all federal and State
18 funding programs, including programs available under
19 Medicaid waiver amendments and resources under the federal
20 Workforce Innovation and Opportunity Act, to assist
21 individuals with disabilities to obtain competitive,
22 integrated employment.

23 (8) The tracking of outcomes of individuals with
24 disabilities on the basis of:

25 (A) wages;

26 (B) hours worked;

1 (C) unemployment rates;

2 (D) the number of individuals who move from
3 subminimum wage positions to competitive, integrated
4 employment;

5 (E) the number of individuals who move from
6 subminimum wage positions to nonpaying activities;

7 (F) the number of hours of paid supports; and

8 (G) the use and costs of Medicaid for acute health
9 care and outpatient mental health care costs.

10 (9) In the formulation of the phase-out plan, special
11 attention must be paid to building adequate capacity in the
12 disability provider ecosystem to ensure individuals with
13 all levels of disability can secure competitive,
14 integrated employment as defined in the federal Workforce
15 Innovation and Opportunity Act. Special attention must be
16 given to prevent any systematic shift of income-earning
17 activity to unpaid day habilitation activity.

18 (c) In implementing the phase-out plan, the Department
19 shall consult with:

20 (1) the State agencies listed in subsection (a);

21 (2) the ARC of Illinois;

22 (3) the Illinois Association of Rehabilitation
23 Facilities;

24 (4) the Illinois Network of Centers for Independent
25 Living;

26 (5) the Illinois Task Force on Employment and Economic

1 Opportunity for Persons with Disabilities;

2 (6) the Illinois Self-Advocacy Alliance;

3 (7) the Institute on Public Policy for People with
4 Disabilities;

5 (8) the Great Lakes ADA Center;

6 (9) holders of certificates issued to Community
7 Rehabilitation Programs under Section 14(c) of the Fair
8 Labor Standards Act of 1938;

9 (10) the Association of People Supporting Employment
10 First;

11 (11) the Illinois Association of the Deaf;

12 (12) the University Center of Excellence in
13 Developmental Disabilities;

14 (13) the National Federation of the Blind of Illinois;

15 and

16 (14) any other relevant stakeholders.

17 (d) (1) On or before January 1, 2020, the Secretary of Human
18 Services shall submit the phase-out plan to the Governor and
19 the General Assembly.

20 (2) On or before January 1, 2021, January 1, 2022, and
21 January 1, 2023, the Secretary shall report to the Governor and
22 the General Assembly on:

23 (A) the benchmarks and status of achieving the outcomes
24 included in the phase-out plan; and

25 (B) recommendations for funding levels or other
26 resources necessary to implement the phase-out plan.

1 (20 ILCS 1305/1-80 new)

2 Sec. 1-80. Customized work plans.

3 (a)(1) For each individual who is paid less than the
4 minimum wage under Sections 5 and 10 of the Minimum Wage Law,
5 the Department shall develop a written individualized
6 customized work plan on or before January 1, 2021 that
7 addresses how community integration and employment will be
8 accomplished.

9 (2) The customized work plan shall be developed with input
10 from the individual receiving services, and, where applicable,
11 from the individual's family, the individual's vocational
12 rehabilitation counselor, and any staff from the Department's
13 Division of Developmental Disabilities or a Pre-Admission
14 Screening/Independent Service Coordination agency who have
15 interacted with the individual concerning employment and other
16 life goals.

17 (3) The Department shall use appropriate communication
18 devices and techniques, including sign language, to facilitate
19 the involvement of the individual in the development of each
20 customized work plan.

21 (b) Customized work plans shall include all of the
22 following:

23 (1) A recommendation on jobs and careers that allow the
24 job seeker to thrive and contribute to an employer's needs.

25 (2) A description of the supports required for the

1 individual to work, if so desired by the individual, in the
2 most integrated setting appropriate to complete the tasks
3 and requirements of his or her job with minimal intrusion.

4 (3) A listing of barriers that prevent the individual
5 from receiving the services and supports required for the
6 individual to work in the most integrated setting
7 appropriate to meet the individual's needs, including:

8 (A) barriers to accessing funding and resources,
9 including for staffing, transportation, and other
10 needed services and supports;

11 (B) decision-making by the individual or the
12 individual's representative, as appropriate;

13 (C) barriers to accessing medical or behavioral
14 support needs;

15 (D) family members' concerns or opposition; and

16 (E) options for activity other than compensated
17 employment in the person's life and community.

18 (4) An update on the status and progress made toward
19 addressing and resolving barriers identified under
20 paragraph (3) in a previous customized work plan.

21 (c) The Department shall develop, in consultation with
22 interested stakeholders, the protocol and format for the
23 customized work plan.

24 (d) On an annual basis and at any other time requested by
25 an individual who is paid less than the minimum wage under
26 Sections 5 and 10 of the Minimum Wage Law, the individual and

1 the individual's vocational rehabilitation counselor, or other
2 responsible party designated by the Secretary, shall discuss
3 the most integrated employment setting that is appropriate for
4 the individual in accordance with the federal Americans with
5 Disabilities Act. The annual review shall document in the
6 individual's customized work plan:

7 (1) any discussions held under this subsection; and

8 (2) any recommendations that resulted from the
9 discussions.

10 (e)(1) The Department shall track the progress of
11 individuals who have customized work plans by collecting the
12 following data:

13 (A) the wages of the individuals;

14 (B) the unemployment rates of the individuals;

15 (C) the number of individuals who moved from subminimum
16 wage positions to competitive, integrated employment;

17 (D) the number of individuals who moved from subminimum
18 wage positions to nonpaying activities; and

19 (E) the health costs, including outpatient mental
20 health costs, paid by Medicaid for the individuals.

21 (2) On or before January 1, 2022, January 1, 2023, and
22 January 1, 2024, the Secretary shall submit to the Governor and
23 the General Assembly a summary of the data collected under
24 paragraph (1) on a statewide and regional basis. The report to
25 the General Assembly shall be filed with the Clerk of the House
26 of Representatives and the Secretary of the Senate.

1 (20 ILCS 1305/1-85 new)

2 Sec. 1-85. 14c Worker Protection Fund.

3 (a) The 14c Worker Protection Fund is created as a special
4 fund in the State treasury. Moneys in the Fund shall be used,
5 subject to appropriation, by the Department to subsidize wages
6 paid to workers with intellectual and developmental
7 disabilities who were or could be employed in special minimum
8 wage positions under Section 14(c) of the Fair Labor Standards
9 Act of 1938.

10 (b) The Department shall adopt rules establishing a process
11 for the administration of the Fund in an equitable and
12 transparent manner to ensure no worker previously employed in a
13 subminimum work position loses any opportunity for meaningful
14 activity or employment experiences after the effective date of
15 this amendatory Act of the 101st General Assembly.

16 (c) A minimum percentage of the budget for Department's
17 Division of Developmental Disabilities shall be committed to
18 the Fund as follows:

19 (1) in fiscal years 2020 and 2021, 1%;

20 (2) in fiscal year 2022, 2%;

21 (3) in fiscal year 2023, 3%;

22 (4) in fiscal year 2024 and each fiscal year
23 thereafter, 4%.

24 Section 10. The Department of Labor Law of the Civil

1 Administrative Code of Illinois is amended by adding Section
2 1505-215 as follows:

3 (20 ILCS 1505/1505-215 new)

4 Sec. 1505-215. Special wage certificates; persons with
5 disabilities.

6 (a) As used in this Section:

7 "Director" means the Director of Labor.

8 "Federal certificate" means a certificate that the United
9 States Department of Labor issues to a work activities center
10 or other sheltered workshop to allow the work activities center
11 or sheltered workshop to pay an individual less than the wage
12 otherwise required for that individual under the federal Fair
13 Labor Standards Act of 1938.

14 (b)(1) Subject to the limitations in this Section, the
15 Director may not authorize a work activities center or other
16 sheltered workshop to pay an employee who has a disability less
17 than the minimum wage otherwise required under the Minimum Wage
18 Law for the employee.

19 (2) Beginning January 1, 2022, the Director may not
20 authorize a work activities center or other sheltered workshop
21 to pay an employee with a disability less than the minimum wage
22 if the work activities center or sheltered workshop was not
23 authorized to do so before January 1, 2021 by the United States
24 Department of Labor.

25 (c)(1) To authorize a work activities center or other

1 sheltered workshop to pay less than the minimum wage, the
2 Director shall:

3 (A) issue a State certificate that sets wages for
4 employees of the work activities center or sheltered
5 workshop;

6 (B) accept a federal certificate for the work
7 activities center or sheltered workshop; or

8 (C) grant an exception for the work activities center
9 or sheltered workshop, but only if:

10 (i) the Director has not issued a State certificate
11 to the work activities center or sheltered workshop;

12 (ii) the work activities center or sheltered
13 workshop is not eligible for a federal certificate; and

14 (iii) the Director investigates and holds a
15 hearing on the exception.

16 (2) The Director shall accept a federal certificate if a
17 work activities center or other sheltered workshop submits that
18 federal certificate to the Director within 10 days after the
19 work activities center or sheltered workshop receives the
20 federal certificate.

21 (d) (1) Each certificate that the Director issues under this
22 Section shall state the period for which the certificate is in
23 effect.

24 (2) The acceptance of a federal certificate does not apply
25 automatically to an individual whom a work activities center or
26 other sheltered workshop continues to employ after the

1 individual completes a training program that the work
2 activities center or sheltered workshop runs.

3 (e)(1) The Director may revoke acceptance of a federal
4 certificate if:

5 (A) the United States Department of Labor revokes the
6 federal certificate; or

7 (B) at any time before revocation by the Department of
8 Labor and after an investigation and hearing, the Director
9 finds good cause to revoke the acceptance.

10 (2) The Director shall send notice of a hearing under this
11 subsection, by certified mail, to the holder of the federal
12 certificate at least 30 days before the hearing.

13 Section 15. The Illinois Council on Developmental
14 Disabilities Law is amended by adding Section 2008 as follows:

15 (20 ILCS 4010/2008 new)

16 Sec. 2008. Independent study on phase-out and customized
17 work plans.

18 (a) The Illinois Council on Developmental Disabilities
19 shall:

20 (1) commission an independent study of the phase-out
21 plan and the customized work plans described in Sections
22 1-75 and 1-80 of the Department of Human Services Act;

23 (2) determine through the study:

24 (A) whether the plans are having their intended

1 effects;

2 (B) how many people have transitioned from
3 subminimum wage work to competitive, integrated
4 employment opportunities;

5 (C) whether there are any significant, related,
6 regional, or demographic trends; and

7 (D) whether there are health care savings or costs
8 as a result of the plans; and

9 (3) make any related recommendations for possible
10 changes in State law or policy regarding the employment of
11 individuals with disabilities.

12 (b) On or before July 1, 2023, the Illinois Council on
13 Developmental Disabilities shall report its findings and
14 recommendations to the Governor and the General Assembly.

15 Section 20. The Minimum Wage Law is amended by changing
16 Section 10 as follows:

17 (820 ILCS 105/10) (from Ch. 48, par. 1010)

18 Sec. 10. (a) The Director shall make and revise
19 administrative regulations, including definitions of terms, as
20 he deems appropriate to carry out the purposes of this Act, to
21 prevent the circumvention or evasion thereof, and to safeguard
22 the minimum wage established by the Act. Regulations governing
23 employment of learners may be issued only after notice and
24 opportunity for public hearing, as provided in subsection (c)

1 of this Section.

2 (b) (Blank). ~~In order to prevent curtailment of~~
3 ~~opportunities for employment, avoid undue hardship, and~~
4 ~~safeguard the minimum wage rate under this Act, the Director~~
5 ~~may also issue regulations providing for the employment of~~
6 ~~workers with disabilities at wages lower than the wage rate~~
7 ~~applicable under this Act, under permits and for such periods~~
8 ~~of time as specified therein; and providing for the employment~~
9 ~~of learners at wages lower than the wage rate applicable under~~
10 ~~this Act. However, such regulation shall not permit lower wages~~
11 ~~for persons with disabilities on any basis that is unrelated to~~
12 ~~such person's ability resulting from his disability, and such~~
13 ~~regulation may be issued only after notice and opportunity for~~
14 ~~public hearing as provided in subsection (c) of this Section.~~

15 (c) Prior to the adoption, amendment or repeal of any rule
16 or regulation by the Director under this Act, except
17 regulations which concern only the internal management of the
18 Department of Labor and do not affect any public right provided
19 by this Act, the Director shall give proper notice to persons
20 in any industry or occupation that may be affected by the
21 proposed rule or regulation, and hold a public hearing on his
22 proposed action at which any such affected person, or his duly
23 authorized representative, may attend and testify or present
24 other evidence for or against such proposed rule or regulation.
25 Rules and regulations adopted under this Section shall be filed
26 with the Secretary of State in compliance with "An Act

1 concerning administrative rules", as now or hereafter amended.
2 Such adopted and filed rules and regulations shall become
3 effective 10 days after copies thereof have been mailed by the
4 Department to persons in industries affected thereby at their
5 last known address.

6 (d) The commencement of proceedings by any person aggrieved
7 by an administrative regulation issued under this Act does not,
8 unless specifically ordered by the Court, operate as a stay of
9 that administrative regulation against other persons. The
10 Court shall not grant any stay of an administrative regulation
11 unless the person complaining of such regulation files in the
12 Court an undertaking with a surety or sureties satisfactory to
13 the Court for the payment to the employees affected by the
14 regulation, in the event such regulation is affirmed, of the
15 amount by which the compensation such employees are entitled to
16 receive under the regulation exceeds the compensation they
17 actually receive while such stay is in effect.

18 (Source: P.A. 99-143, eff. 7-27-15.)

19 (820 ILCS 105/5 rep.)

20 Section 25. The Minimum Wage Law is amended by repealing
21 Section 5.

22 Section 30. The State Finance Act is amended by adding
23 Section 5.891 as follows:

1 (30 ILCS 105/5.891 new)

2 Sec. 5.891. The 14c Worker Protection Fund.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law, except that Sections 20 and 25 of this Act take
5 effect July 1, 2024.

1 INDEX

2 Statutes amended in order of appearance

3 20 ILCS 1305/1-75 new

4 20 ILCS 1305/1-80 new

5 20 ILCS 1305/1-85 new

6 20 ILCS 1505/1505-215 new

7 20 ILCS 4010/2008 new

8 820 ILCS 105/10 from Ch. 48, par. 1010

9 820 ILCS 105/5 rep.

10 30 ILCS 105/5.891 new