

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 253

FISCAL
NOTE

BY SENATORS JEFFRIES, BALDWIN, AND STOLLINGS

[Introduced January 10, 2020; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §18-10P-1, §18-10P-2, §18-10P-3, and §18-10P-4, all relating to wages of
 3 persons with disabilities; initiating a State Employment First Policy to facilitate integrated
 4 employment of disabled persons; providing legislative findings; establishing a taskforce to
 5 develop a State Employment First Policy; and providing for implementation of the State
 6 Employment First Policy.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10P. EMPLOYMENT FIRST POLICY.

§18-10P-1. Legislative findings.

1 The Legislature finds that there is a need to create a state initiative to promote competitive,
 2 integrated, and customized employment opportunities for disabled citizens using publicly funded
 3 services regardless of the individuals' level of disability. This Employment First Policy initiative is
 4 intended to promote the expectation that individuals with intellectual, developmental, and other
 5 disabilities are valued members of the workforce, and can often meet the same employment
 6 standards, responsibilities, and expectations as other working-age adults when provided the
 7 proper education, reasonable accommodations, and supports.

§18-10P-2. Definitions.

1 "Competitive Employment" means work that is performed on a full-time or part-time basis
 2 (including self-employment) for which an individual is compensated at a rate that is not less than
 3 the rates specified in §21-5C-2 of this code, and for which the employee is eligible for the level of
 4 benefits provided to other employees and which presents opportunities for advancement that are
 5 similar to those for other employees who are not individuals with disabilities who have similar
 6 positions.

7 "Customized Employment" means those employment supports and services for an
 8 individual that are designed in a way to personalize the employment relationship between the
 9 person with a disability and employer in a way that meets the needs of both.

10 “Integrated employment” means employment at a location where the percentage of
11 employees with disabilities relative to the employees who do not have disabilities is consistent
12 with the norms of the general workforce and where the employee interacts with other persons
13 who do not have disabilities to the same extent that employees who do have disabilities, and who
14 are in comparable positions, interact with other persons.

§18-10P-3. Creation of Employment First Taskforce.

1 The Director of the Division of Rehabilitation Services shall establish a taskforce for the
2 purpose of developing recommendations on implementation of an Employment First Policy. The
3 director shall appoint the membership of the taskforce, which shall include, at a minimum the
4 following members:

- 5 (1) The Director of the Division of Rehabilitation Services, who shall chair the taskforce;
- 6 (2) An individual with a developmental disability;
- 7 (3) A family member of a person with a disability;
- 8 (4) A representative of the department of education;
- 9 (5) A representative of Workforce West Virginia;
- 10 (6) A representative of the Bureau for Behavioral Health and Health Facilities;
- 11 (7) A representative of the Bureau for Medical Services (State Medicaid Agency);
- 12 (8) A representative of the West Virginia Developmental Disabilities Council;
- 13 (9) A representative of a provider of integrated and competitive employment services who
14 does not also provide sheltered or otherwise segregated services for individuals with disabilities;
- 15 (10) A representative of West Virginia Center of Excellence in Disabilities; and
- 16 (11) A representative of Disability Rights of West Virginia (the Governor designated state
17 protection and advocacy agency).

§18-10P-4. State Employment First Policy.

1 The Division of Rehabilitation Services, the department of education, Workforce West
2 Virginia, the State Bureau for Behavioral Health and Health Facilities and the Bureau for Medical

3 Services shall adopt and implement a joint Employment First plan as recommended by the
4 Employment First Taskforce pursuant to §18-10P-2 of this code, which recognizes that earning a
5 living wage through competitive employment in the general workforce is the first and preferred
6 outcome of all publicly funded services provided to working-age individuals with disabilities. The
7 Employment First Taskforce shall develop and implement a plan that:

8 (1) Describes timeframes and proposals for aligning state policies, including eligibility and
9 funding priorities, allocations for responsibility and authority for ensuring implementation;

10 (2) Detailed cost projections for additional state funding (if any) needed over a five-year
11 period to: (A) Provide rate increases and incentives to providers that implement Employment First
12 services; and (B) train and/or retrain the workforce.

13 (3) Describes strategies, timelines and plans to reduce sheltered work settings while
14 increasing investment in integrated employment services.

15 (4) Incorporates Employment First practices and methods in policy improvement plans so
16 that customized, person-centered and individually tailored employment supports are available to
17 people with intellectual, developmental, and other disabilities, including people with complex
18 support needs.

19 (5) Complies with federal policy and practice mandates regarding employment services
20 design, settings and coordination among stakeholders including:

21 (A) Centers for Medicare and Medicaid Services Home and Community Based Services
22 setting final rule;

23 (B) Workforce Innovation and Opportunity Act; and

24 (C) United States Department of Justice rulings that found that segregated work settings
25 violate the “most integrated setting” rule of the Americans with Disabilities Act relative to the
26 findings of the Supreme Court of the United States in the Olmstead court case.

27 (6) Describes minimal workforce competency-based training standards applicable for job
28 coaches, case managers, and other relevant personnel.

29 (7) Establishes interagency agreements, as appropriate, to improve coordination of
30 services, and collect and share data to inform long-term systems planning.

31 (8) Proposes initiatives to address the culture of low expectations, to which parents of
32 young children with intellectual, developmental, and other disabilities are exposed.

33 (9) Provides the Governor and Legislature the Employment First Plan within 12 months of
34 the enactment of this bill; report to the Governor and the Legislature annually on the findings and
35 results of the efforts of the taskforce to accomplish the goals of the plan; present data which
36 reflects the number of people with disabilities who attained employment as a result of the
37 implementation of the plan as well as any barriers to implementation and strategies developed to
38 address them; and

39 (10) Provides updates to the plan biennially or more often as needed.

40 (11) Ensures:

41 (A) That individuals, particularly secondary and post-secondary students, with disabilities
42 understand the importance of, and are given the opportunity to explore options for further training,
43 as a pathway to integrated employment;

44 (B) The availability and accessibility of individualized training and support in an individual's
45 preferred employment options;

46 (C) The availability and accessibility of resources necessary to enable an individual to
47 understand possible effects of earned income and accumulation of assets on the individual's
48 eligibility for public benefits and opportunities to properly manage and save income and assets
49 without jeopardizing such benefits;

50 (D) That competitive integrated employment, while being the first and preferred outcome,
51 is not required of an individual with a disability to secure and maintain necessary public benefits,
52 health care, training and support for individuals with disabilities, and this statute may not be
53 construed to limit or disallow any disability benefits to which a person with a disability who is
54 unable to be employed as contemplated by this statute would otherwise be entitled;

- 55 (E) That the staff of public schools, vocational service programs and community providers
56 are trained and supported to assist in achieving the goal of competitive integrated employment
57 for all individuals with disabilities; and
58 (12) Promotes partnerships with employers to overcome barriers to meet workforce needs
59 including the creative use of technology and innovation.

NOTE: The purpose of this bill is to provide for fair pay and maximized employment of disabled persons; create a state "Employment First" policy that encourages agencies to facilitate employment of disabled persons; establish a task force to initiate these policies; and provide for the DHHR Bureau for Behavioral Health, Division of Rehabilitation Services, Department of Education, DHHR Bureau for Medical Services (State Medicaid Agency) and Workforce WV to implement the policy.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.