

House Bill 2298

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Education)

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**.

Allows component school district of education service district to enter into contract with public or private entity if school district determines that service needs of school district are not being met by local service plan.

Eliminates election procedure for selecting board of directors of education service district. Provides that superintendents of component school districts constitute board of directors of education service district.

Requires budget committee members of education service district to be members of component school district boards.

Directs board of education service district to ensure that annual audit of accounts of education service district is prepared.

A BILL FOR AN ACT

1
2 Relating to education service districts; creating new provisions; amending ORS 255.005, 267.380,
3 332.136, 334.025, 334.100, 334.175, 334.240, 334.730, 334.760 and 656.430 and section 15, chapter
4 828, Oregon Laws 2005; and repealing ORS 334.032, 334.035, 334.045, 334.090, 334.095, 334.740 and
5 334.750 and section 5, chapter 59, Oregon Laws 2010.

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

7 **SECTION 1.** ORS 334.175 is amended to read:

8 334.175. (1) An education service district shall provide regionalized core services to component
9 school districts. The goals of these services are to:

10 (a) Assist component school districts in meeting the requirements of state and federal law;

11 (b) Improve student learning;

12 (c) Enhance the quality of instruction provided to students;

13 (d) Provide professional development to component school district employees;

14 (e) Enable component school districts and the students who attend schools in those districts to
15 have equitable access to resources; and

16 (f) Maximize operational and fiscal efficiencies for component school districts.

17 (2) The services provided by an education service district shall be provided according to a local
18 service plan developed by the education service district and component school districts. The educa-
19 tion service district and component school districts shall develop the local service plan to meet the
20 goals specified in subsection (1) of this section. The local service plan must include services in at
21 least the following areas:

22 (a) Programs for children with special needs, including but not limited to special education ser-
23 vices, services for at-risk students and professional development for employees who provide those
24 services.

25 (b) Technology support for component school districts and the individual technology plans of
26 those districts, including but not limited to technology infrastructure services, data services, in-

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 instructional technology services, distance learning and professional development for employees who
 2 provide those services.

3 (c) School improvement services for component school districts, including but not limited to:

4 (A) Services designed to support component school districts in meeting the requirements of state
 5 and federal law;

6 (B) Services designed to allow the education service district to participate in and facilitate a
 7 review of the state and federal standards related to the provision of a quality education by compo-
 8 nent school districts;

9 (C) Services designed to support and facilitate continuous school improvement planning;

10 (D) Services designed to address schoolwide behavior and climate issues;

11 (E) Services designed to support career and technical education; and

12 (F) Professional development for employees who provide the services described in this para-
 13 graph.

14 (d) Administrative and support services for component school districts, including but not limited
 15 to services designed to consolidate component school district business functions, liaison services
 16 between the Department of Education and component school districts and registration of children
 17 being taught by private teachers, parents or legal guardians pursuant to ORS 339.035.

18 (e) Other services that an education service district is required to provide by state or federal
 19 law, including but not limited to services required under ORS 339.005 to 339.090.

20 (3) In addition to the services specified in subsection (2) of this section, a local service plan may
 21 include other services that are designed to meet regional needs.

22 (4) A local service plan shall also contain annual performance measures for the education ser-
 23 vice district.

24 (5) A local service plan must:

25 (a) Be adopted by the board of the education service district.

26 (b) After being adopted by the board of the education service district, be approved on or before
 27 March 1 by resolution of two-thirds of the component school districts that are a part of the educa-
 28 tion service district and that have at least a majority of the pupils included in the average daily
 29 membership of the education service district, as determined by the reports of such school districts
 30 for the preceding year, enrolled in the schools of the school districts.

31 (6) Notwithstanding the process for approval and adoption required by subsection (5) of this
 32 section, if the component school districts approve an amendment to a local service plan pursuant
 33 to subsection (5)(b) of this section, the board of an education service district may amend a local
 34 service plan that has been previously adopted by the board and approved by the component school
 35 districts. An amendment to a local service plan may be done at any time.

36 **(7) If a component school district determines that a local service plan, or the provision**
 37 **of services under a local service plan, does not meet the service needs of the component**
 38 **school district, then the component school district may contract with a public or private**
 39 **entity for the provision of services.**

40 [(7)] (8) An education service district may provide the services required by the local service plan
 41 directly through the staff of the district. In addition, an education service district may provide ser-
 42 vices required by the local service plan through the operation of a public school, a public charter
 43 school pursuant to ORS chapter 338, an alternative school or a preschool.

44 [(8)] (9) An education service district may provide the services required by the local service plan
 45 in cooperation with another education service district or with a school district. In addition, an ed-

1 ucation service district may contract with a public or private entity for the provision of services.

2 **SECTION 2.** ORS 334.025 is amended to read:

3 334.025. (1) The board of directors of an education service district shall consist of [*seven, nine*
4 *or 11 members*] **the superintendents of the component school districts.**

5 [*(2) In education service districts, not fewer than five of the directors shall be elected, one from*
6 *each of the zones established under ORS 334.032. At the discretion of the board of directors, one or two*
7 *board members may be elected from the district at large.*]

8 [(3)] **(2)** On the petition of two component school districts, the board shall establish local advi-
9 sory committees to represent the interests of areas within the petitioning districts. The local advi-
10 sory committees shall advise the board on matters of concern within the advisory committee's area.
11 Local advisory committees shall represent two or more component school districts.

12 [*(4) The board of directors may by resolution increase or decrease the number of members of the*
13 *board. The board's resolution shall be entered with sufficient time for the board to give the required*
14 *information to the elections officer under ORS 255.069, and the board's resolution shall have no effect*
15 *on the terms of any current board members.*]

16 **SECTION 3.** ORS 334.100 is amended to read:

17 334.100. (1) Each **year, the** education service district board shall meet during July and organize
18 by electing one of its members chairperson and one vice chairperson[*each of whom shall serve until*
19 *a successor is elected and qualified*]. No member shall serve as chairperson for more than two years
20 in succession.

21 (2) Regular meetings of an education service district board shall be held on meeting dates de-
22 termined by the board. Special meetings may be held on dates to be determined by the board.

23 (3) Members of the education service district board shall receive no compensation for their
24 services, but shall be reimbursed for all traveling and other expenses necessarily incurred in per-
25 forming their duties as members of the board.

26 (4) A majority of the members of the education service district board shall constitute a quorum.
27 A lesser number may meet and adjourn from time to time and compel the presence of absent mem-
28 bers. The affirmative vote of a majority of members of the board is required to transact any busi-
29 ness.

30 (5) Any duty imposed upon the education service district board as a body must be performed at
31 a regular or special meeting and must be made a matter of record. The consent to any particular
32 measure obtained of individual members when the board is not in session is not an act of the board
33 and is not binding upon the district.

34 **SECTION 4.** ORS 334.240 is amended to read:

35 334.240. (1) **Except as provided in subsection (2) of this section,** the education service district
36 board shall be subject in all respects to the Local Budget Law (ORS 294.305 to 294.565)[*except that*
37 *in addition to other qualifications, members of the budget committee who are not members of the edu-*
38 *cation service district board shall be members of component school district boards within the education*
39 *service district or shall be designees of a school district board*].

40 [(2) *Notwithstanding ORS 294.336 and 294.341, a majority of the members of the budget committee*
41 *of an education service district must consist of members of the component school district boards or*
42 *designees of a school district board. The budget committee may meet to conduct business if the educa-*
43 *tion service district board is unable to fill all of the positions on the budget committee.*]

44 **(2) Notwithstanding ORS 294.336 and 294.341, the members of the budget committee of**
45 **an education service district must be members of the component school district boards.**

1 (3) The *[board of the education service district]* **budget committee** shall prepare *[and adopt]* a
 2 budget for the operational and administrative expenses of the education service district. The budget
 3 shall include amounts necessary to provide services required by the local service plan of the district
 4 developed under ORS 334.175. **The budget must be adopted by the board of the education ser-**
 5 **vice district.**

6 (4) **The board of the education service district shall ensure that an annual audit of the**
 7 **accounts of the education service district is prepared in accordance with the Municipal Audit**
 8 **Law, as provided in ORS 297.405 to 297.555 and 297.990.**

9 **SECTION 5.** ORS 334.730 is amended to read:

10 334.730. *[(1)]* Immediately after the order to join two or more education service districts to-
 11 gether, the boards of directors of all education service districts within the boundaries of the new
 12 district shall meet together upon the call of the chairperson of the board of the most populous dis-
 13 trict. *[Notwithstanding ORS 334.025 or ORS chapter 255, the joint board of directors shall divide the*
 14 *new district into as many zones as the board considers necessary, but not fewer than seven nor more*
 15 *than 11. The zones shall be as nearly equal in population as may be practicable. If possible, the joint*
 16 *board shall establish the zones so that each county within the new education service district, the ma-*
 17 *ajority of the land area of which lies within the boundaries of the education service district, has at least*
 18 *one member on the board.]*

19 *[(2) Within 90 days after the zones required in subsection (1) of this section are established, the*
 20 *joint board of directors shall call a special election in the new district for the purpose of electing di-*
 21 *rectors, one of whom shall be elected from each zone established under subsection (1) of this section*
 22 *by the electors of the zone.]*

23 **SECTION 6.** ORS 334.760 is amended to read:

24 334.760. *[During the period following their election and]* Prior to the date the new education
 25 service district comes into existence, the board of directors of the new education service district
 26 may take such action as is essential in order that the new district may carry out its required func-
 27 tions when it comes into existence, including the preparation and adoption of a budget for the new
 28 district. Expenditures of the board under this section shall be paid from the budgets of the compo-
 29 nent education service districts on a prorated basis.

30 **SECTION 7.** ORS 255.005 is amended to read:

31 255.005. As used in this chapter:

32 (1) “County clerk” means the county clerk or the county official in charge of elections.

33 (2) “District board” means the governing body of a district.

34 (3) “District election” means any election authorized or required to be held by a district.

35 (4) “District elections authority” means the county court or board of county commissioners,
 36 district board or other body or officer authorized or required to call a district election.

37 (5) “Elections officer” means the:

38 (a) County clerk of the county in which the administrative office of the district is located re-
 39 garding a measure, or a candidate for an office, to be voted on in a district located in more than
 40 one county.

41 (b) County clerk regarding a measure, or a candidate for an office, to be voted on in a district
 42 situated wholly within the county.

43 (6) “Elector” means an individual qualified to vote under section 2, Article II, Oregon Consti-
 44 tution.

45 (7) “Measure” includes any of the following submitted to the people for their approval or re-

1 jection at an election:

2 (a) A proposed law.

3 (b) An Act or part of an Act of the Legislative Assembly.

4 (c) A revision of or amendment to the Oregon Constitution.

5 (d) Local, special or municipal legislation.

6 (e) A proposition or question.

7 (8) "Regular district election" means the election held each year for the purpose of electing
8 members of any district board as defined in subsection (2) of this section.

9 (9) "School district" means a common school district, a union high school district[, *an education*
10 *service district*] or a community college district.

11 **SECTION 8.** ORS 267.380 is amended to read:

12 267.380. (1) As used in ORS 267.380 and 267.385, unless the context requires otherwise:

13 (a) "Employer" means:

14 (A) A person who is in such relation to another person that the person may control the work
15 of that other person and direct the manner in which it is to be done;

16 (B) An officer or employee of a corporation, or a member or employee of a partnership, who as
17 such officer, employee or member is under a duty to perform the acts required of employers by ORS
18 316.162 to 316.221; or

19 (C) The State of Oregon or any political subdivision in this state, except for a school district
20 as defined in ORS 255.005 (9) **or an education service district**, with respect to work performed
21 within the district by an employee of the State of Oregon or of the political subdivision.

22 (b) "Employer" does not include an organization exempt from taxation under section 501(c)(3)
23 of the Internal Revenue Code, as amended and in effect on December 31, 1996, except that
24 "employer" does include hospitals.

25 (c) "Wages" means remuneration for services performed by an employee for the employer, in-
26 cluding the cash value of all remuneration paid in any medium other than cash.

27 (d) "Net earnings from self-employment" has the same meaning as in section 1402 of the Internal
28 Revenue Code of 1986, as that section was in effect and operative on December 31, 1988. For the
29 purposes of computing net earnings from self-employment, a district may by ordinance from time to
30 time adopt definitions of the terms used in section 1402.

31 (e) "Individual" means any natural person.

32 (2) As used in this section and ORS 267.385, "wages" does not include remuneration paid:

33 (a) For services performed in the employ of the United States of America and institutions (ex-
34 cluding hospitals) exempt from taxation under section 501(c)(3) of the Internal Revenue Code, as
35 amended and in effect on December 31, 1996.

36 (b) For domestic service in a private home if the total amount paid to such employee is less than
37 \$1,000 a year.

38 (c) For casual labor not in the course of the employer's trade or business.

39 (d) For services performed wholly outside of the district.

40 (e) To an employee whose services to the employer consist solely of seasonal labor in connection
41 with the planting, cultivating or harvesting of agricultural crops.

42 (f) To seamen who are exempt from garnishment, attachment or execution under title 46, United
43 States Code.

44 (g) To individuals temporarily employed as emergency firefighters.

45 (h) If the remuneration is not subject to withholding under ORS chapter 316.

1 (i) To employees' trusts exempt from taxation under section 401 of the Internal Revenue Code,
2 as amended and in effect on December 31, 1996.

3 (j) If the remuneration is not wages under section 3121(a)(5)(I) of the Internal Revenue Code, as
4 amended and in effect on December 31, 1996.

5 (3) "Net earnings from self-employment" does not include income:

6 (a)(A) From activities wholly outside of the district.

7 (B) That is wages.

8 (C) That would be wages under section 3121 of the Internal Revenue Code, as amended and in
9 effect on December 31, 1990, but for the provisions of section 3121(b)(8)(A) of the Internal Revenue
10 Code.

11 (b) That is not net earnings from self-employment under section 1402(a)(8) of the Internal Re-
12 venue Code by reason of the amendments to section 1402 by section 1456 of the Small Business Job
13 Protection Act of 1996 (P.L. 104-188).

14 (4) Notwithstanding any other provision of this section, "wages" includes:

15 (a) Any amount included in the definition of "wages" under section 3121 of the Internal Revenue
16 Code, as defined in ORS 316.012, by reason of the provisions of section 3121(a)(5)(C), 3121(a)(5)(D),
17 3121(v)(1)(A), 3121(v)(1)(B), 3121(v)(3)(A), 3121(a)(5)(E) or 3121(a)(5)(H) of the Internal Revenue Code;
18 or

19 (b) Any amount deferred under a nonqualified deferred compensation plan.

20 (5) Any amount taken into account as wages by reason of subsection (4) of this section and the
21 income attributable thereto shall not afterwards be treated as wages under this section.

22 **SECTION 9.** ORS 332.136 is amended to read:

23 332.136. (1) Each position of school director shall be designated by number as Position No. 1,
24 Position No. 2 and so on.

25 (2) At the first organizational meeting of the board following formation of the district, the
26 chairperson of the board shall assign a position number to each office on the board. The chairperson
27 shall certify the number assigned to the director holding that position and shall file one copy of the
28 certification in the records of the district.

29 (3) This section applies to the following districts that are not zoned:

30 (a) Common school districts; **and**

31 (b) Union high school districts. [*and*]

32 [*(c) Education service districts.*]

33 **SECTION 10.** ORS 656.430 is amended to read:

34 656.430. (1) Upon determining that an employer has qualified as a self-insured employer under
35 ORS 656.407, the Director of the Department of Consumer and Business Services shall issue a cer-
36 tificate to that effect to the employer.

37 (2) Coverage of a self-insured employer is effective on the date of certification unless a later
38 date is specified in the certificate.

39 (3) Two or more entities shall not be included in the certification of one employer unless in each
40 entity the same person, or group of persons, or corporation owns a majority interest. If an entity
41 owns a majority interest in another entity which in turn owns the majority interest in another en-
42 tity, all entities so related may be combined regardless of the number of entities in succession. If
43 more than one entity is included in the certification of one employer, each entity included is jointly
44 and severally liable for any compensation and other amounts due the Department of Consumer and
45 Business Services under this chapter by any entity included in the certification.

1 (4) In the term “majority interest,” as used in this section, “majority” means more than 50 per-
 2 cent.

3 (5) If an entity other than a partnership:

4 (a) Has issued voting stock, “majority interest” means a majority of the issued voting stock;

5 (b) Has not issued voting stock, “majority interest” means a majority of the members; or

6 (c) Has not issued voting stock and has no members, “majority interest” means a majority of the
 7 board of directors or comparable governing body.

8 (6) If the entity is a partnership, majority interest shall be determined in accordance with the
 9 participation of each general partner in the profits of the partnership.

10 (7) Notwithstanding any other provision of this section, the director may certify five or more
 11 subject employers as a self-insured employer group, which shall be considered an employer for pur-
 12 poses of this chapter, if:

13 (a) The director finds that the employers as a group meet the requirements of ORS 656.407 (1)(b)
 14 and (2);

15 (b) The director determines that:

16 (A) If the employers as a group have insurance coverage with a retention of \$100,000 or more,
 17 the employers have a combined net worth of \$1 million or more; or

18 (B) If the employers as a group have insurance coverage with a retention of less than \$100,000,
 19 the employers have a combined net worth at least equal to the proportion of \$1 million that the
 20 retention bears to \$100,000;

21 (c) The director finds that the grouping is likely to improve accident prevention and claims
 22 handling for the employer;

23 (d) Each employer executes and files with the designated entity a written agreement, in such
 24 form as the director may prescribe, in which:

25 (A) The employer agrees to be jointly and severally liable for the payment of any compensation
 26 and other amounts due to the Department of Consumer and Business Services under this chapter
 27 incurred by a member of the group; or

28 (B) The employer, if a city, county, special district described and listed in ORS 198.010 or
 29 198.180, translator district formed under ORS 354.605 to 354.715, weed control district organized
 30 under ORS 569.350 to 569.450, intergovernmental agency created under ORS 225.050, school district
 31 as defined in ORS 255.005 (9), **education service district organized under ORS chapter 334**,
 32 public housing authority created under ORS chapter 456 or regional council of governments created
 33 under ORS chapter 190, agrees to be individually liable for the payment of any compensation and
 34 other amounts due to the department under this chapter incurred by the employer during the period
 35 of group self-insurance;

36 (e) The director finds that the employer group is organized as a corporation or cooperative
 37 pursuant to ORS chapter 60, 62 or 65, is an intergovernmental entity created under ORS 190.003 to
 38 190.130 and the bylaws require the governing group to obtain fidelity bonds;

39 (f) The director finds that the employer group has designated an entity within or for the group
 40 responsible for centralized claims processing, payroll records, safety requirements, recording and
 41 submitting assessments and contributions and making such other reports as the director may re-
 42 quire; and

43 (g) The employer has presented a method approved by the director to notify the department of:

44 (A) The commencement or termination of membership by employers in the group, and the effect
 45 thereof on the net worth of the employers in the group; and

1 (B) Whether an employer who terminates membership in the group continues to be a subject
2 employer.

3 (8) A self-insured employer must have excess insurance coverage appropriate for the employer's
4 potential liability under this chapter with an insurer authorized to do business in this state. A self-
5 insured employer certified prior to November 1, 1981, must have excess insurance coverage appro-
6 priate for the employer's potential liability under this chapter either with an insurer authorized to
7 do business in this state or with any other insurer from whom such insurance can be obtained pur-
8 suant to ORS 744.305 to 744.405 (1985 Replacement Part). Evidence of such coverage must be sub-
9 mitted at the time application is made for self-insured certification in the form of an insurance
10 binder providing the appropriate coverage effective the date of certification. The policy providing
11 such coverage must be filed with the director not later than 30 days after the date the coverage is
12 effective. Any changes in the insurer or the coverage must be filed with the department not later
13 than 30 days after the effective date of the change. With respect to such coverage:

14 (a) The policy must include a provision, approved by the director, for reimbursement to the de-
15 partment of all expenses paid by the department on behalf of the employer pursuant to ORS 656.614
16 (1) and 656.443 in the same manner as if the department were the insured employer, subject to the
17 policy limitations on amounts and limits of liability to the insured employer; and

18 (b) The period of coverage must be continuous and remain in effect until the certification is
19 revoked or canceled.

20 (9) Notwithstanding ORS 656.440, the director may revoke the certification of any self-insured
21 employer after giving 30 days' written notice if the employer:

22 (a) Fails to comply with subsection (8) of this section; or

23 (b) In the case of an employer described in subsection (7) of this section, fails to comply with
24 that subsection.

25 (10) A self-insured employer must have an occupational safety and health loss control program
26 as required by ORS 654.097.

27 (11) The director, by rule shall:

28 (a) Prescribe methods for determining and approving net worth.

29 (b) Prescribe the types and approve the retention and limitation levels of excess insurance pol-
30 icies.

31 (c) Establish reporting requirements.

32 (d) Prescribe information to be submitted in applications for self-insured employer certifications.

33 (e) Prescribe the form and manner of reporting commencement or termination in a self-insured
34 employer group.

35 (f) Prescribe the form, amount and manner for establishing and operating a common claims fund.

36 (g) Prescribe such other requirements as the director considers necessary so that employers
37 certified as self-insured employers will meet the financial responsibilities under this chapter.

38 (12) For the purpose of certification as a self-insured employer group, cities, counties, special
39 districts created under ORS 198.010, intergovernmental agencies created under ORS 225.050, school
40 districts as defined in ORS 255.005 (9), **education service districts organized under ORS chapter**
41 **334**, public housing authorities created under ORS chapter 456 and regional councils of governments
42 created under ORS chapter 190 shall be considered by the director to be of the same industry.

43 (13) Notwithstanding subsection (8) of this section, a public utility with assets of more than \$500
44 million may obtain excess insurance coverage from an eligible surplus lines insurer. As used in this
45 subsection, "public utility" has the meaning given that term in ORS 757.005.

1 **SECTION 11.** Section 15, chapter 828, Oregon Laws 2005, as amended by section 6, chapter 589,
2 Oregon Laws 2007, and section 6, chapter 59, Oregon Laws 2010, is amended to read:

3 **Sec. 15.** (1) Sections 11 to 14, chapter 828, Oregon Laws 2005, are repealed on June 30, [2013]
4 **2012.**

5 (2) The amendments to ORS 260.432 by section 8, chapter 589, Oregon Laws 2007, become op-
6 erative on June 30, [2013] **2012.**

7 **SECTION 12.** The term of office of a director who serves on the board of directors of an
8 education service district terminates on June 30, 2012.

9 **SECTION 13.** ORS 334.032, 334.035, 334.045, 334.090, 334.095, 334.740 and 334.750 and section
10 5, chapter 59, Oregon Laws 2010, are repealed.

11 **SECTION 14.** The amendments to ORS 255.005, 267.380, 332.136, 334.025, 334.100, 334.240,
12 334.730, 334.760 and 656.430 and section 15, chapter 828, Oregon Laws 2005, by sections 2 to
13 11 of this 2011 Act and the repeal of ORS 334.032, 334.035, 334.045, 334.090, 334.095, 334.740 and
14 334.750 and section 5, chapter 59, Oregon Laws 2010, by section 11 of this 2011 Act become
15 operative July 1, 2012.
16
