

# Enrolled Senate Bill 26

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Superintendent of Public Instruction Susan Castillo for Department of Education)

CHAPTER .....

AN ACT

Relating to private schools; creating new provisions; amending ORS 289.005, 316.852, 317.488, 326.603, 339.370, 342.138, 345.585, 345.990 and 444.310; repealing ORS 345.505, 345.515, 345.525, 345.535, 345.545, 345.555, 345.565 and 345.575; and declaring an emergency.

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

**SECTION 1. ORS 345.505, 345.515, 345.525, 345.535, 345.545, 345.555, 345.565 and 345.575 are repealed.**

**SECTION 2.** ORS 289.005, as amended by section 1, chapter 3, Oregon Laws 2010, is amended to read:

289.005. As used in this chapter, unless the context requires otherwise:

- (1) "Authority" means the Oregon Facilities Authority created by this chapter.
- (2) "Bonds" or "revenue bonds" means revenue bonds, as defined in ORS 286A.001.
- (3) "Cost" means the cost of:

(a) Construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project, including all lands, structures, real or personal property, rights, rights of way, air rights, franchises, easements and interests acquired or used for or in connection with a project;

(b) Demolition or removal of buildings or structures on land as acquired, including the cost of acquiring lands to which the buildings or structures may be moved;

(c) All machinery and equipment;

(d) Financing charges, interest prior to, during and for a period after completion of construction and acquisition, reasonably required amounts to make the project operational, provisions for reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements;

(e) Architectural, actuarial engineering, financial and legal services, plans specifications, studies, surveys, estimates of costs and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project;

(f) Management, operation or funding of a qualified program; and

(g) Other expenses that are necessary or incident to a project, the financing of the project or the placing of the project in operation.

(4) "Cultural institution" means a public or nonprofit institution within this state which engages in the cultural, intellectual, scientific, environmental, educational or artistic enrichment of the people of this state. "Cultural institution" includes, without limitation, aquaria, botanical societies,

historical societies, land conservation organizations, libraries, museums, performing arts associations or societies, scientific societies, wildlife conservation organizations and zoological societies. "Cultural institution" does not mean any school or any institution primarily engaged in religious or sectarian activities.

(5) "Health care institution" means a public or nonprofit organization within this state that provides health care and related services, including but not limited to the provision of inpatient and outpatient care, diagnostic or therapeutic services, laboratory services, medicinal drugs, nursing care, assisted living, elderly care and housing, including retirement communities, and equipment used or useful for the provision of health care and related services.

(6) "Housing institution" means a public or nonprofit organization within this state that provides decent, affordable housing to low income persons.

(7) "Institution" means a cultural institution, a health care institution, a housing institution, an institution for higher education, an institution for prekindergarten through grade 12 education, a school for persons with disabilities or another nonprofit.

(8) "Institution for higher education" means a public or nonprofit educational institution within this state authorized by law to provide a program of education beyond the high school level, including community colleges and associate degree granting institutions. "Institution for higher education" does not mean any school or any institution primarily engaged in religious or sectarian activities.

(9) "Institution for prekindergarten through grade 12 education" means an Oregon prekindergarten as defined in ORS 329.170, a public educational institution within this state authorized by law to provide a program of education for kindergarten through grade 12 or a nonprofit educational institution within this state [*registered as a private school under ORS 345.545*] that provides a program of education for prekindergarten through grade 12 **as a private school**. "Institution for prekindergarten through grade 12 education" does not mean a school or institution primarily engaged in religious or sectarian activities.

(10) "Nonprofit" means an institution, organization or entity within this state exempt from taxation under section 501(c)(3) of the Internal Revenue Code as defined in ORS 314.011.

(11)(a) "Project" means the financing or refinancing of the costs, including, without limitation, acquisition, construction, enlargement, remodeling, renovation, improvement, furnishing and equipping, of the following:

(A) In the case of a participating institution that is an institution for higher education, an institution for prekindergarten through grade 12 education or a school for persons with disabilities, a structure or structures suitable for use as a dormitory or other multiunit housing facility for students, faculty, officers or employees, or a dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, maintenance, storage or utility facility and other structures or facilities related to any of the structures required or used for the instruction of students, the conducting of research or the operation of an institution for higher education, an institution for prekindergarten through grade 12 education or a school for persons with disabilities. It shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended and shall further include any furnishings, equipment, machinery and other similar items necessary or convenient for the operation of an institution of higher education, an institution for prekindergarten through grade 12 education or a school for persons with disabilities, whether or not such items are related to a particular facility or structure financed under this chapter.

(B) In the case of a participating institution that is a housing institution, a structure or structures suitable for use as housing, including residences or multiunit housing facilities, administration buildings, maintenance, storage or utility facilities and other structures or facilities related to any of the structures required or used for the operation of the housing, including parking and other facilities or structures essential or convenient for the orderly provision of such housing. It shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items

necessary or convenient for the particular housing facility or structure in the manner for which its use is intended and shall further include any furnishings, equipment, machinery and other similar items necessary or convenient for the provision of housing, whether or not such items are related to a particular facility or structure financed under this chapter.

(C) In the case of a participating institution that is a cultural institution, a structure or structures suitable for its purposes, whether or not to be used to provide educational services, or research resources, including use as or in connection with an administrative facility, aquarium, assembly hall, auditorium, botanical garden, exhibition hall, gallery, greenhouse, library, museum, scientific laboratory, theater or zoological facility. It shall also include supporting facilities, landscaping, site preparation, furniture, equipment, machinery and other similar items necessary or convenient for the operation of a cultural institution, whether or not such items are related to a particular facility or structure financed under this chapter, including books, works of art or other items for display or exhibition.

(D) In the case of a participating institution that is a health care institution, a structure or structures suitable for its purposes, including hospital facilities, inpatient and outpatient clinics, doctors' offices, administration buildings, parking, maintenance, storage or utility facilities, nursing care or assisted living facilities, elderly care and housing facilities, including retirement communities, and other structures or facilities related to any of the structures required or used for the operation of the health care institution, including other facilities or structures essential or convenient for the orderly provision of such health care. It shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the particular health care facility or structure in the manner for which its use is intended and shall further include any working capital, furnishings, equipment, machinery and other similar items necessary or convenient for the provision of health care, whether or not such items are related to a particular facility or structure financed under this chapter.

(E) In the case of a participating institution that is a nonprofit not otherwise specified in this subsection, a structure or structures suitable for its purposes, including facilities or structures essential or convenient for the orderly operations of the nonprofit. It shall also include acquisition of interests in land, landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the nonprofit, whether or not the items are related to a particular facility or structure financed under this chapter, including borrowings needed to alleviate interim cash flow deficits of the nonprofit.

(F) In the case of a participating institution, costs to manage, operate or fund a qualified program or costs to alleviate interim cash flow deficits of the institution.

(b) "Project" also includes any combination of one or more of the projects undertaken jointly by one or more participating institutions with each other or with other parties.

(c) "Project" does not include the financing or refinancing of the costs of a facility used or to be used for sectarian instruction or as a place of religious worship or any facility which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

(12) "Qualified program" means a financing program, or other activities, of a participating institution that is eligible for financing through the issuance of revenue bonds the interest on which is:

(a) Excluded from gross income for federal income tax purposes; or

(b) Eligible for a federal tax credit or subsidy under the Internal Revenue Code.

(13) "School for persons with disabilities" means a public or nonprofit primary, secondary or post-secondary school within this state that serves students at least 70 percent of whom are persons with disabilities as determined by one or more appropriate education, rehabilitation, medical or mental health authorities; is accredited by a recognized accrediting body; and is determined by the authority to be a major resource of benefit to persons with disabilities. "School for persons with disabilities" does not mean any school or any institution primarily engaged in religious or sectarian activities.

**SECTION 3.** ORS 316.852 is amended to read:

316.852. (1) As used in this section:

(a) "Contribution base" has the meaning given that term in section 170 of the Internal Revenue Code.

(b) "Educational institution" means:

(A) A public common or union high school district;

(B) A private school [*that has been registered under ORS 345.505 to 345.575 and*] that:

(i) Is an organization described in section 501(c)(3) of the Internal Revenue Code;

**(ii) Offers education in prekindergarten, kindergarten or grades 1 through 12, or any combination of those grade levels; and**

**(iii) Provides instructional programs that are not limited solely to dancing, drama, music, religious or athletic instruction;**

(C) An accredited public community college, college or university located in this state; or

(D) An accredited private community college, college or university located in this state that is an organization described in section 501(c)(3) of the Internal Revenue Code.

(c) "Qualified donation" means a transfer of a fee estate in land from a taxpayer to an educational institution without consideration of any kind given to the taxpayer by the educational institution in exchange for the land.

(d) "Qualified reduced sale" means a transfer of a fee estate in land by a taxpayer to an educational institution for consideration paid by the educational institution that is less than the fair market value of the land at the time of transfer.

(2) There shall be added to federal taxable income the amount that otherwise would be taken into account as a charitable contribution deduction for a qualified donation or a qualified reduced sale pursuant to section 170 of the Internal Revenue Code.

(3) In the case of a qualified donation made by the taxpayer during the tax year, the fair market value of the qualified donation shall be subtracted from federal taxable income.

(4) In the case of a qualified reduced sale made by the taxpayer during the tax year, the difference between the fair market value of the land and the sale price of the land shall be subtracted from federal taxable income.

(5) Notwithstanding subsections (3) and (4) of this section, the subtraction allowed under this section may not exceed:

(a) In the case of a qualified donation, 50 percent of the taxpayer's contribution base for the tax year; or

(b) In the case of a qualified reduced sale, 25 percent of the taxpayer's contribution base for the tax year.

(6) Any subtraction not allowed because of the limitations imposed under subsection (5) of this section may be carried forward and claimed as a subtraction in the next succeeding tax year. Any amount remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise until the 15th succeeding tax year, but may not be carried beyond the 15th succeeding tax year.

(7) If a partnership or S corporation makes a qualified donation or qualified reduced sale during the tax year, each partner or shareholder shall be allowed a subtraction under this section in proportion to their ownership interest in the partnership or S corporation.

**SECTION 4.** ORS 317.488 is amended to read:

317.488. (1) As used in this section:

(a) "Educational institution" means:

(A) A public common or union high school district;

(B) A private school [*that has been registered under ORS 345.505 to 345.575 and*] that:

(i) Is an organization described in section 501(c)(3) of the Internal Revenue Code;

**(ii) Offers education in prekindergarten, kindergarten or grades 1 through 12, or any combination of those grade levels; and**

**(iii) Provides instructional programs that are not limited solely to dancing, drama, music, religious or athletic instruction;**

(C) An accredited public community college, college or university located in this state; or

(D) An accredited private community college, college or university located in this state that is an organization described in section 501(c)(3) of the Internal Revenue Code.

(b) "Qualified donation" means a transfer of a fee estate in land from a taxpayer to an educational institution without consideration of any kind given to the taxpayer by the educational institution in exchange for the land.

(c) "Qualified reduced sale" means a transfer of a fee estate in land by a taxpayer to an educational institution for consideration paid by the educational institution that is less than the fair market value of the land at the time of transfer.

(2) There shall be added to federal taxable income the amount that otherwise would be taken into account as a charitable contribution deduction for a qualified donation or a qualified reduced sale pursuant to section 170 of the Internal Revenue Code.

(3) In the case of a qualified donation made by the taxpayer during the tax year, the fair market value of the qualified donation shall be subtracted from federal taxable income.

(4) In the case of a qualified reduced sale made by the taxpayer during the tax year, the difference between the fair market value of the land and the sale price of the land shall be subtracted from federal taxable income.

(5) Notwithstanding subsections (3) and (4) of this section, the subtraction allowed under this section may not exceed:

(a) In the case of a qualified donation, 50 percent of Oregon taxable income computed without regard to this section, ORS 317.476 or section 170 of the Internal Revenue Code; or

(b) In the case of a qualified reduced sale, 25 percent of Oregon taxable income computed without regard to this section, ORS 317.476 or section 170 of the Internal Revenue Code.

(6) Any subtraction not allowed because of the limitations imposed under subsection (5) of this section may be carried forward and claimed as a subtraction in the next succeeding tax year. Any amount remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise until the 15th succeeding tax year, but may not be carried beyond the 15th succeeding tax year.

**SECTION 5.** ORS 326.603 is amended to read:

326.603. (1) For the purposes of requesting a state or nationwide criminal records check under ORS 181.534, the Department of Education may require the fingerprints of:

(a) A school district or private school contractor, whether part-time or full-time, or an employee of a contractor, whether part-time or full-time, who has direct, unsupervised contact with students as determined by the district or private school.

(b) A person newly hired, whether part-time or full-time, by a school district or private school in a capacity not described in ORS 342.223 (1).

(c) A person who is a community college faculty member providing instruction at a kindergarten through grade 12 school site during the regular school day.

(d) A person who is an employee of a public charter school.

(2)(a) A school district shall send to the Department of Education for purposes of a criminal records check any information, including fingerprints, for each person described in subsection (1) of this section.

(b) A private school may send to the Department of Education for purposes of a criminal records check any information, including fingerprints, for each person described in subsection (1)(a), (b) or (c) of this section.

(3) The Department of Education shall request that the Department of State Police conduct a criminal records check as provided in ORS 181.534 and may charge the school district or private school a fee as established by rule under ORS 181.534. The school district or private school may recover its costs or a portion thereof from the person described in subsection (1) of this section. If the person described in subsection (1)(b) or (d) of this section requests, the school district shall and

a private school may withhold the amount from amounts otherwise due the person, including a periodic payroll deduction rather than a lump sum payment.

(4) Notwithstanding subsection (1) of this section, the Department of Education may not require fingerprints of a person described in subsection (1) of this section if the person or the person's employer was checked in one school district or private school and is currently seeking to work in another district or private school unless the person lived outside this state during the interval between the two periods of time of working in the district or private school.

(5) Nothing in this section requires a person described in subsection (1)(a), (b) or (d) of this section to submit to fingerprinting until the person has been offered employment or a contract by a school district or private school. Contractor employees may not be required to submit to fingerprinting until the contractor has been offered a contract.

(6) If a person described in subsection (1) of this section states on a criminal history form provided by the Department of Education that the person has not been convicted of a crime but the criminal records check indicates that the person has a conviction, the department shall determine whether the person knowingly made a false statement as to the conviction. The department shall develop a process and criteria to use for appeals of a determination under this subsection.

(7)(a) The Superintendent of Public Instruction shall inform a school district or private school if a person described in subsection (1) of this section has been convicted of a crime listed in ORS 342.143 (3) or has knowingly made a false statement on a criminal history form provided by the Department of Education as to the conviction of any crime.

(b) If a person described in subsection (1) of this section has been convicted of a crime listed in ORS 342.143 (3), a school district may not employ or contract with the person and a private school may choose not to employ or contract with the person. Notification by the superintendent that the school district may not employ or contract with the person shall remove the person from any school district policies, collective bargaining provisions regarding dismissal procedures and appeals and the provisions of ORS 342.805 to 342.937.

(c) If a person described in subsection (1) of this section has knowingly made a false statement on a criminal history form provided by the Department of Education as to the conviction of a crime not listed in ORS 342.143 (3), a school district or private school may choose to employ or contract with the person.

(8) If a person described in subsection (1) of this section refuses to consent to the criminal records check or refuses to be fingerprinted, the school district shall terminate the employment or contract status of the person. Termination under this subsection removes the person from any school district policies, collective bargaining provisions regarding dismissal procedures and appeals and the provisions of ORS 342.805 to 342.937.

(9) A school district may not hire or continue to employ or contract with or allow the contractor to continue to assign a person to the school project if the person described in subsection (1) of this section has been convicted of a crime according to the provisions of ORS 342.143.

(10) As used in this section and ORS 326.607:

(a) "Private school" means a school that [*provides educational services as defined in ORS 345.505 and is registered as a private school under ORS 345.505 to 345.575.*]:

**(A) Offers education in prekindergarten, kindergarten or grades 1 through 12, or any combination of those grade levels; and**

**(B) Provides instructional programs that are not limited solely to dancing, drama, music, religious or athletic instruction.**

(b) "School district" means:

(A) A school district as defined in ORS 330.003.

(B) The Oregon School for the Deaf.

(C) An educational program under the Youth Corrections Education Program.

(D) A public charter school as defined in ORS 338.005.

(E) An education service district.

**SECTION 6.** ORS 339.370 is amended to read:

339.370. As used in ORS 339.370 to 339.400:

- (1) "Abuse" has the meaning given that term in ORS 419B.005.
- (2) "Disciplinary records" means the records related to a personnel discipline action or materials or documents supporting that action.
- (3) "Education provider" means:
  - (a) A school district, as defined in ORS 332.002.
  - (b) The Oregon School for the Deaf.
  - (c) An educational program under the Youth Corrections Education Program.
  - (d) A public charter school, as defined in ORS 338.005.
  - (e) An education service district, as defined in ORS 334.003.
  - (f) Any state-operated program that provides educational services to kindergarten through grade 12 students.
  - (g) A private school.
- (4) "Investigation" means a detailed inquiry into the factual allegations of a report of suspected child abuse or sexual conduct that:
  - (a) Is based on interviews with the complainant, witnesses and the school employee who is the subject of the report; and
  - (b) Meets any negotiated standards of an employment contract or agreement.
- (5) "Law enforcement agency" has the meaning given that term in ORS 419B.005.
- (6) "Private school" means a school that provides [*educational services, as defined in ORS 345.505,*] to kindergarten through grade 12 students **instructional programs that are not limited solely to dancing, drama, music, religious or athletic instruction.**
- (7) "School board" means the governing board or governing body of an education provider.
- (8) "School employee" means an employee of an education provider.
- (9)(a) "Sexual conduct" means any verbal or physical conduct by a school employee that:
  - (A) Is sexual in nature;
  - (B) Is directed toward a kindergarten through grade 12 student;
  - (C) Has the effect of unreasonably interfering with a student's educational performance; and
  - (D) Creates an intimidating, hostile or offensive educational environment.
- (b) "Sexual conduct" does not include abuse.
- (10) "Substantiated report" means a report of child abuse or sexual conduct that:
  - (a) An education provider has reasonable cause to believe is founded based on the available evidence after conducting an investigation; and
  - (b) Involves conduct that the education provider determines is sufficiently serious to be documented in the school employee's personnel file.

**SECTION 7.** ORS 342.138 is amended to read:

342.138. (1) A continuing teaching, personnel service or administrative license shall qualify the holder to accept any assignments for preprimary through grade 12 for which the holder has completed the advanced requirements established by the rules of the Teacher Standards and Practices Commission.

(2) A continuing license shall be issued on application for five years to an otherwise qualified person who has:

- (a) Completed an advanced professional education program approved by the commission;
- (b) Been employed for a minimum period of time to be determined by the commission in:
  - (A) An Oregon public school;
  - (B) An Oregon private school that meets the standards adopted by the commission by rule [*or is registered as a private school under ORS 345.505 to 345.575*]; or
  - (C) Another educational setting approved by the commission; and
- (c) Demonstrated minimum competencies, knowledge and skills required for the continuing license through an approved teacher education institution, school district, professional organization identified in ORS 342.121, or professional assessment approved by the commission.

(3) The holder of a continuing license may renew the continuing license in accordance with the rules of the commission.

**SECTION 8.** ORS 345.990 is amended to read:

345.990. [(1)] Violation of any provision of ORS 345.020, 345.030, 345.070, 345.115 or 345.325 is a Class B misdemeanor.

[(2) *Representation by a private school, as defined in ORS 345.505, that it is registered pursuant to ORS 345.505 to 345.575 when it is not registered is a Class C misdemeanor.*]

**SECTION 9.** ORS 444.310 is amended to read:

444.310. The Oregon Health Authority shall conduct an annual survey, to be completed by June 15, of all public schools[,] **and** public charter schools [*and registered private schools*] in Oregon to collect data about diabetes occurring in students. Each school surveyed shall report to the authority for each student enrolled at the school who has Type 1 or Type II diabetes:

- (1) The name and address of the student;
- (2) The gender of the student;
- (3) The date of birth of the student;
- (4) The type of diabetes diagnosed; and
- (5) The date of diagnosis.

**SECTION 10. ORS 345.585 is added to and made a part of ORS chapter 342.**

**SECTION 11.** ORS 345.585 is amended to read:

345.585. [*Teaching experience in a registered private school, as defined in ORS 345.505, or licensed career school, as defined in ORS 345.010, shall apply to meeting*] The requirements of ORS 342.135 (3)(a), 342.136 and 342.138[.] **may be met by teaching experience in:**

(1) **A licensed career school, as defined in ORS 345.010.**

(2) **A private school that meets standards adopted by the Teacher Standards and Practices Commission by rule.**

**SECTION 12. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect July 1, 2011.**

**Passed by Senate April 5, 2011**

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2011

**Approved:**

.....M.,....., 2011

**Passed by House May 24, 2011**

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2011

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Kate Brown, Secretary of State