

House Bill 2641

Sponsored by Representative WILLIAMSON; Representatives BUCKLEY, CLEM, DOHERTY, GREENLICK, HOLVEY, KOMP, NATHANSON, WITT, Senators MONROE, ROBLAN (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits school districts from entering into contract with entity that is for-profit entity unless contract is for good or service that is provided only by for-profit entities. Prohibits school districts from awarding contracts for goods or services without competition.

A BILL FOR AN ACT

1
2 Relating to contracts for schools; creating new provisions; and amending ORS 279B.075, 279B.085,
3 332.075 and 338.115.

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

5 **SECTION 1.** ORS 332.075 is amended to read:

6 332.075. (1) Any district school board may:

7 (a) Fix the days of the year and the hours of the day when schools shall be in session.

8 (b) Adopt textbooks and other instructional materials as provided in ORS 337.120 and 337.141
9 and courses of study for the use of such schools as provided in ORS 336.035.

10 (c) Authorize the use of the schools for purposes of training students of an approved teacher
11 education institution, as defined in ORS 342.120, and for such purposes may enter into contracts
12 with the approved teacher education institutions on such terms as may be agreed upon. Such con-
13 tracts as they relate to student teachers shall have the same effect and be subject to the same
14 regulations as a contract between a licensed teacher and a district school board.

15 (d) Develop and operate with other school districts or community college districts secondary
16 career and technical education programs for pupils of more than one district and fix by agreement
17 the duration of the district's obligation to continue such activity, subject to the availability of funds
18 therefor.

19 (e) Authorize the school district to be a member of and pay fees, if any, to any voluntary or-
20 ganization that administers interscholastic activities or that facilitates the scheduling and pro-
21 gramming of interscholastic activities.

22 (f) Accept money or property donated for the use or benefit of the school district and, consistent
23 with the laws of this state, use such money or property for the purpose for which it was donated.

24 (2)(a) All contracts of the school district must be:

25 (A) Approved by the district school board before an order can be drawn for payment.

26 **(B) With an entity that is not a for-profit entity, unless the contract is for a good or
27 service that is provided only by for-profit entities.**

28 (b) If a contract is made without the authority of the district school board, the individual mak-
29 ing such contract shall be personally liable.

30 (3) Notwithstanding subsection (2) of this section, a district school board may, by resolution or

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 policy, authorize its superintendent or the superintendent's designee to enter into and approve pay-
 2 ment on contracts for products, materials, supplies, capital outlay, equipment and services that are
 3 within appropriations made by the district school board pursuant to ORS 294.456. A district school
 4 board may not authorize its superintendent or the superintendent's designee under this subsection
 5 to enter into and approve payment on contracts that are **prohibited under subsection (2)(b) of**
 6 **this section**, collective bargaining agreements or service contracts that include the provision of
 7 labor performed by employees of the school district.

8 **SECTION 2.** ORS 338.115, as amended by section 9, chapter 92, Oregon Laws 2012, is amended
 9 to read:

10 338.115. (1) Statutes and rules that apply to school district boards, school districts or other
 11 public schools do not apply to public charter schools. However, the following laws do apply to public
 12 charter schools:

- 13 (a) Federal law;
- 14 (b) ORS 30.260 to 30.300 (tort claims);
- 15 (c) ORS 192.410 to 192.505 (public records law);
- 16 (d) ORS 192.610 to 192.690 (public meetings law);
- 17 (e) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);
- 18 (f) ORS 326.565, 326.575 and 326.580 (student records);
- 19 (g) ORS 181.534, 326.603, 326.607, 342.223 and 342.232 (criminal records checks);
- 20 (h) ORS 329.045 (academic content standards and instruction);
- 21 (i) ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative cer-
 22 tificate);
- 23 (j) The statewide assessment system developed by the Department of Education for mathematics,
 24 science and English under ORS 329.485 (2);
- 25 (k) ORS 337.150 (textbooks);
- 26 (L) ORS 339.141, 339.147 and 339.155 (tuition and fees);
- 27 (m) ORS 339.250 (12) (prohibition on infliction of corporal punishment);
- 28 (n) ORS 339.326 (notice concerning students subject to juvenile court petitions);
- 29 (o) ORS 339.370, 339.372, 339.388 and 339.400 (reporting of abuse and sexual conduct and training
 30 on prevention and identification of abuse and sexual conduct);
- 31 (p) ORS chapter 657 (Employment Department Law);
- 32 (q) ORS 659.850, 659.855 and 659.860 (discrimination);
- 33 (r) Any statute or rule that establishes requirements for instructional time provided by a school
 34 during each day or during a year;
- 35 (s) Health and safety statutes and rules;
- 36 (t) Any statute or rule that is listed in the charter;
- 37 (u) ORS 339.119 (consideration for educational services); and
- 38 (v) This chapter.

39 (2) Notwithstanding subsection (1) of this section, a charter may specify that statutes and rules
 40 that apply to school district boards, school districts and other public schools may apply to a public
 41 charter school.

42 (3) If a statute or rule applies to a public charter school, then the terms "school district" and
 43 "public school" include public charter school as those terms are used in that statute or rule.

44 (4) A public charter school may not violate the Establishment Clause of the First Amendment
 45 to the United States Constitution or section 5, Article I of the Oregon Constitution, or be religion

1 based.

2 (5)(a) A public charter school shall maintain an active enrollment of at least 25 students.

3 (b) For a public charter school that provides educational services under a cooperative agree-
 4 ment described in ORS 338.080, the public charter school is in compliance with the requirements of
 5 this subsection if the public charter school provides educational services under the cooperative
 6 agreement to at least 25 students, without regard to the school districts in which the students are
 7 residents.

8 (6) A public charter school may sue or be sued as a separate legal entity.

9 (7) The sponsor, members of the governing board of the sponsor acting in their official capacities
 10 and employees of a sponsor acting in their official capacities are immune from civil liability with
 11 respect to all activities related to a public charter school within the scope of their duties or em-
 12 ployment.

13 (8) A public charter school may enter into contracts and may lease facilities and services from
 14 a school district, education service district, public university listed in ORS 352.002, other govern-
 15 mental unit or any person or legal entity. **A public charter school may enter into a contract**
 16 **only with an entity that is not a for-profit entity, unless the contract is for a good or service**
 17 **that is provided only by for-profit entities.**

18 (9) A public charter school may not levy taxes or issue bonds under which the public incurs li-
 19 ability.

20 (10) A public charter school may receive and accept gifts, grants and donations from any source
 21 for expenditure to carry out the lawful functions of the school.

22 (11) The school district in which the public charter school is located shall offer a high school
 23 diploma, a modified diploma, an extended diploma or an alternative certificate to any public charter
 24 school student who meets the district's and state's standards for a high school diploma, a modified
 25 diploma, an extended diploma or an alternative certificate.

26 (12) A high school diploma, a modified diploma, an extended diploma or an alternative certificate
 27 issued by a public charter school grants to the holder the same rights and privileges as a high
 28 school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a
 29 nonchartered public school.

30 (13) Prior to beginning operation, the public charter school shall show proof of insurance to the
 31 sponsor as specified in the charter.

32 (14) A public charter school may receive services from an education service district in the same
 33 manner as a nonchartered public school in the school district in which the public charter school is
 34 located.

35 **SECTION 3.** ORS 338.115, as amended by section 7, chapter 839, Oregon Laws 2007, section 12,
 36 chapter 50, Oregon Laws 2008, section 4, chapter 618, Oregon Laws 2009, section 3, chapter 53,
 37 Oregon Laws 2010, section 3, chapter 94, Oregon Laws 2011, section 118, chapter 637, Oregon Laws
 38 2011, section 5, chapter 682, Oregon Laws 2011, and section 10, chapter 92, Oregon Laws 2012, is
 39 amended to read:

40 338.115. (1) Statutes and rules that apply to school district boards, school districts or other
 41 public schools do not apply to public charter schools. However, the following laws do apply to public
 42 charter schools:

- 43 (a) Federal law;
- 44 (b) ORS 30.260 to 30.300 (tort claims);
- 45 (c) ORS 192.410 to 192.505 (public records law);

- 1 (d) ORS 192.610 to 192.690 (public meetings law);
- 2 (e) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);
- 3 (f) ORS 326.565, 326.575 and 326.580 (student records);
- 4 (g) ORS 181.534, 326.603, 326.607, 342.223 and 342.232 (criminal records checks);
- 5 (h) ORS 329.045 (academic content standards and instruction);
- 6 (i) ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative cer-
- 7 tificate);
- 8 (j) ORS 329.496 (physical education);
- 9 (k) The statewide assessment system developed by the Department of Education for mathematics,
- 10 science and English under ORS 329.485 (2);
- 11 (L) ORS 337.150 (textbooks);
- 12 (m) ORS 339.141, 339.147 and 339.155 (tuition and fees);
- 13 (n) ORS 339.250 (12) (prohibition on infliction of corporal punishment);
- 14 (o) ORS 339.326 (notice concerning students subject to juvenile court petitions);
- 15 (p) ORS 339.370, 339.372, 339.388 and 339.400 (reporting of abuse and sexual conduct and training
- 16 on prevention and identification of abuse and sexual conduct);
- 17 (q) ORS chapter 657 (Employment Department Law);
- 18 (r) ORS 659.850, 659.855 and 659.860 (discrimination);
- 19 (s) Any statute or rule that establishes requirements for instructional time provided by a school
- 20 during each day or during a year;
- 21 (t) Health and safety statutes and rules;
- 22 (u) Any statute or rule that is listed in the charter;
- 23 (v) ORS 339.119 (consideration for educational services); and
- 24 (w) This chapter.
- 25 (2) Notwithstanding subsection (1) of this section, a charter may specify that statutes and rules
- 26 that apply to school district boards, school districts and other public schools may apply to a public
- 27 charter school.
- 28 (3) If a statute or rule applies to a public charter school, then the terms “school district” and
- 29 “public school” include public charter school as those terms are used in that statute or rule.
- 30 (4) A public charter school may not violate the Establishment Clause of the First Amendment
- 31 to the United States Constitution or section 5, Article I of the Oregon Constitution, or be religion
- 32 based.
- 33 (5)(a) A public charter school shall maintain an active enrollment of at least 25 students.
- 34 (b) For a public charter school that provides educational services under a cooperative agree-
- 35 ment described in ORS 338.080, the public charter school is in compliance with the requirements of
- 36 this subsection if the public charter school provides educational services under the cooperative
- 37 agreement to at least 25 students, without regard to the school districts in which the students are
- 38 residents.
- 39 (6) A public charter school may sue or be sued as a separate legal entity.
- 40 (7) The sponsor, members of the governing board of the sponsor acting in their official capacities
- 41 and employees of a sponsor acting in their official capacities are immune from civil liability with
- 42 respect to all activities related to a public charter school within the scope of their duties or em-
- 43 ployment.
- 44 (8) A public charter school may enter into contracts and may lease facilities and services from
- 45 a school district, education service district, public university listed in ORS 352.002, other govern-

1 mental unit or any person or legal entity. **A public charter school may enter into a contract**
 2 **only with an entity that is not a for-profit entity, unless the contract is for a good or service**
 3 **that is provided only by for-profit entities.**

4 (9) A public charter school may not levy taxes or issue bonds under which the public incurs li-
 5 ability.

6 (10) A public charter school may receive and accept gifts, grants and donations from any source
 7 for expenditure to carry out the lawful functions of the school.

8 (11) The school district in which the public charter school is located shall offer a high school
 9 diploma, a modified diploma, an extended diploma or an alternative certificate to any public charter
 10 school student who meets the district's and state's standards for a high school diploma, a modified
 11 diploma, an extended diploma or an alternative certificate.

12 (12) A high school diploma, a modified diploma, an extended diploma or an alternative certificate
 13 issued by a public charter school grants to the holder the same rights and privileges as a high
 14 school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a
 15 nonchartered public school.

16 (13) Prior to beginning operation, the public charter school shall show proof of insurance to the
 17 sponsor as specified in the charter.

18 (14) A public charter school may receive services from an education service district in the same
 19 manner as a nonchartered public school in the school district in which the public charter school is
 20 located.

21 **SECTION 4.** ORS 279B.075 is amended to read:

22 279B.075. (1) A contracting agency, **other than a school district**, may award a contract for
 23 goods or services without competition when the Director of the Oregon Department of Administra-
 24 tive Services, the local contract review board or a state contracting agency, if it has procurement
 25 authority under ORS 279A.050, or a person designated in writing by the director, board or state
 26 contracting agency with procurement authority under ORS 279A.050, determines in writing, in ac-
 27 cordance with rules adopted under ORS 279A.065, that the goods or services, or class of goods or
 28 services, are available from only one source.

29 (2) The determination of a sole source must be based on written findings that may include:

30 (a) That the efficient utilization of existing goods requires the acquisition of compatible goods
 31 or services;

32 (b) That the goods or services required for the exchange of software or data with other public
 33 or private agencies are available from only one source;

34 (c) That the goods or services are for use in a pilot or an experimental project; or

35 (d) Other findings that support the conclusion that the goods or services are available from only
 36 one source.

37 (3) To the extent reasonably practical, the contracting agency shall negotiate with the sole
 38 source to obtain contract terms advantageous to the contracting agency.

39 **SECTION 5.** ORS 279B.085 is amended to read:

40 279B.085. (1) As used in this section and ORS 279B.400:

41 (a) "Class special procurement" means a contracting procedure that differs from the procedures
 42 described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into
 43 a series of contracts over time or for multiple projects.

44 (b) "Contract-specific special procurement" means a contracting procedure that differs from the
 45 procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of

1 entering into a single contract or a number of related contracts on a one-time basis or for a single
 2 project.

3 (c) "Special procurement" means, unless the context requires otherwise, a class special pro-
 4 curement, a contract-specific special procurement or both.

5 (2) Except as provided in subsection (3) of this section, to seek approval of a special procure-
 6 ment, a contracting agency shall submit a written request to the Director of the Oregon Department
 7 of Administrative Services or the local contract review board, as applicable, that describes the
 8 contracting procedure, the goods or services or the class of goods or services that are the subject
 9 of the special procurement and the circumstances that justify the use of a special procurement under
 10 the standards set forth in subsection (4) of this section.

11 (3)(a) When the contracting agency is the office of the Secretary of State or the office of the
 12 State Treasurer, to seek approval of a special procurement, the contracting agency shall submit a
 13 written request to the Secretary of State or the State Treasurer, as applicable, that describes the
 14 contracting procedure, the goods or services or the class of goods or services that are the subject
 15 of the special procurement and the circumstances that justify the use of a special procurement under
 16 the standards set forth in subsection (4) of this section.

17 **(b) A contracting agency that is a school district may not seek approval of a special**
 18 **procurement or award a contract through special procurement as provided by this section.**

19 (4) The director, a local contract review board, the Secretary of State or the State Treasurer
 20 may approve a special procurement if the director, board, Secretary of State or State Treasurer finds
 21 that a written request submitted under subsection (2) or (3)(a) of this section demonstrates that the
 22 use of a special procurement as described in the request, or an alternative procedure prescribed by
 23 the director, board, Secretary of State or State Treasurer:

24 (a) Is unlikely to encourage favoritism in the awarding of public contracts or to substantially
 25 diminish competition for public contracts; and

26 (b)(A) Is reasonably expected to result in substantial cost savings to the contracting agency or
 27 to the public; or

28 (B) Otherwise substantially promotes the public interest in a manner that could not practicably
 29 be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060,
 30 279B.065 or 279B.070 or under any rules adopted thereunder.

31 (5) Public notice of the approval of a special procurement must be given in the same manner
 32 as provided in ORS 279B.055 (4).

33 (6) If a contracting agency intends to award a contract through a special procurement that calls
 34 for competition among prospective contractors, the contracting agency shall award the contract to
 35 the offeror the contracting agency determines to be the most advantageous to the contracting
 36 agency.

37 (7) When the director, a local contract review board, the Secretary of State or the State
 38 Treasurer approves a class special procurement under this section, the contracting agency may
 39 award contracts to acquire goods or services within the class of goods or services in accordance
 40 with the terms of the approval without making a subsequent request for a special procurement.

41 **SECTION 6. The amendments to ORS 279B.075, 279B.085, 332.075 and 338.115 by sections**
 42 **1 to 5 of this 2013 Act apply to contracts entered into or renewed on or after the effective**
 43 **date of this 2013 Act.**