

# House Bill 2901

Sponsored by Representative AVAKIAN; Representatives BARKER, BUCKLEY, GALIZIO, HUNT, RILEY, SCHAUFLE, SHIELDS, TOMEI, WITT

## 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**.

Directs State Board of Education to enter order to merge education service districts based on specified criteria.

Provides that new education service districts become operative on July 1, 2007.

Directs education service districts to develop local service plans that must be approved by component school districts. Allows education service district to provide services to entities other than component school districts upon approval of Department of Education.

Allows bargaining units that collectively bargain with education service districts to have academically licensed, nonacademically licensed and unlicensed employees in same bargaining unit.

Declares emergency, effective July 1, 2005.

## A BILL FOR AN ACT

1  
2 Relating to education service districts; creating new provisions; amending ORS 243.650, 326.712,  
3 334.010, 334.020, 334.025, 334.090, 334.125, 334.175, 334.177, 334.185, 334.240 and 343.221; repealing  
4 ORS 334.022; and declaring an emergency.

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

6 **SECTION 1. Sections 2 to 6 of this 2005 Act are added to and made a part of ORS chapter**  
7 **334.**

8 **SECTION 2. (1) On or before March 31, 2007, the State Board of Education shall enter**  
9 **an order to change the boundaries of and merge existing education service districts. The**  
10 **boundaries of the merged districts shall be established by the Superintendent of Public In-**  
11 **struction and approved by the board based on the following criteria:**

12 (a) **The boundary of each education service district shall be created to reflect the sense**  
13 **of community within the geographic area of the district. In establishing the boundary the**  
14 **superintendent shall consider whether reasonable access will be allowed to all areas of the**  
15 **district by evaluating the topography, climate and highway patterns of the region.**

16 (b) **Each education service district shall have a minimum of seven and a maximum of 20**  
17 **component school districts.**

18 (c) **Each education service district shall have at least two component school districts,**  
19 **each with an average daily membership (ADM), as defined in ORS 327.006, of at least 3,000.**

20 (d) **Each education service district that is located in a county or counties east of the**  
21 **crest of the Cascade Range, but not including Klamath County, shall have a weighted average**  
22 **daily membership (ADMw), as calculated under ORS 327.013, of at least 10,000.**

23 (e) **Each education service district that is located in a county or counties west of the**  
24 **crest of the Cascade Range, including Klamath County, shall have an ADMw of at least**  
25 **30,000.**

26 (f) **Each education service district shall have at least one institution of higher education**  
27 **listed in ORS 352.002 or community college located within the district.**

**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           (2) The board may waive one or more of the criteria listed in subsection (1) of this section  
 2 if the board determines that there is a conflict between two or more of the criteria.

3           (3) The board shall give the education service districts formed under subsection (1) of  
 4 this section new names, and the affected county assessors shall give the education service  
 5 districts new numbers that have not been used previously.

6           (4) An order entered under this section shall include provisions for the liability of any  
 7 outstanding bonded indebtedness to be distributed over the entire area of the education ser-  
 8 vice district formed by the merger. An order entered under this section shall also include  
 9 provision for the distribution of any assets or liabilities of education service districts that  
 10 are being merged under this section.

11           (5) An order entered under this section shall include provisions for the transfer of em-  
 12 ployees from the former education service districts to the education service districts formed  
 13 by the merger. The employees of any former education service district that is merged with  
 14 another education service district shall be considered employees of the education service  
 15 district formed by the merger, which shall succeed the former districts as a party to the  
 16 respective contracts of employment of the former districts.

17           (6) An education service district employee may not be deprived of seniority or accumu-  
 18 lated sick leave solely because the duties of the employee have been assumed or acquired by  
 19 an employee of another education service district as a result of a merger under this section.

20           (7) An order entered under this section does not require an election on district bounda-  
 21 ries and is not subject to remonstrance or other procedures for boundary changes.

22           (8) An order under this section becomes effective on July 1, 2007.

23           **SECTION 3.** (1) Before the effective date of an order entered under section 2 of this 2005  
 24 Act, the State Board of Education, for the purpose of electing an education service district  
 25 board under this section for each education service district created by the order, shall divide  
 26 each education service district into not more than 11 zones. The zones shall be as nearly  
 27 equal in census population as may be practicable and may be measured along common school  
 28 district boundary lines, except that the zones may be established using voting precinct  
 29 boundaries in order to achieve greater equality of population.

30           (2) If possible, the state board shall establish the zones so that each county within an  
 31 education service district, the majority of the land area of which lies within the boundary  
 32 of the education service district, shall have at least one member on the district board or  
 33 shall have at least one member on the budget committee of the education service district.

34           (3) Notwithstanding ORS 334.090, the terms of office of the directors first elected to the  
 35 board of directors of an education service district created by order of the state board under  
 36 section 2 of this 2005 Act shall be staggered so that at least:

37           (a) Two directors shall serve terms expiring June 30 next following the fourth regular  
 38 district election.

39           (b) Two directors shall serve terms expiring June 30 next following the third regular  
 40 district election.

41           (c) Two directors shall serve terms expiring June 30 next following the second regular  
 42 district election.

43           (d) One director shall serve a term expiring June 30 next following the first regular dis-  
 44 trict election.

45           (4) The directors first elected under this section shall determine by lot the length of the

1 term each shall serve on the district board.

2 (5) Notwithstanding ORS 334.090, the terms of office of members of boards of directors  
 3 of education service districts that are merged by order of the State Board of Education un-  
 4 der section 2 of this 2005 Act shall terminate on June 30, 2007.

5 **SECTION 4.** During the period following entry of an order under section 2 of this 2005  
 6 Act and prior to the effective date of the order, the board of directors of a new education  
 7 service district may take any action necessary for the district to carry out its functions,  
 8 including the preparation and adoption of a budget for the district. Expenditures of the edu-  
 9 cation service district board under this section shall be paid from the budgets of the educa-  
 10 tion service districts that have been merged into the new education service district.

11 **SECTION 5.** (1) Notwithstanding the effective date of an order entered under section 2  
 12 of this 2005 Act, electors are entitled to vote in any elections affecting the new education  
 13 service district in which the electors will reside when the order entered under section 2 of  
 14 this 2005 Act takes effect.

15 (2) Notwithstanding ORS 334.090, electors described in subsection (1) of this section are  
 16 eligible to be candidates for the new education service district board and to serve on the  
 17 budget committee of the new education service district if the electors were eligible to be  
 18 board candidates or budget committee members in the district in which the electors resided  
 19 prior to the effective date of the order entered under section 2 of this 2005 Act.

20 **SECTION 6.** (1) Education service districts shall work as liaisons between the Depart-  
 21 ment of Education and school districts to facilitate and support school districts to meet the  
 22 requirements of state and federal law.

23 (2) Education service districts shall work with the department to analyze student  
 24 achievement data to identify areas that need improvement and, as appropriate, design sol-  
 25 utions that can be delivered through regional and statewide collaboration.

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

27 334.175. (1) *[The education service district or a combination of education service districts or a*  
 28 *school district or other public or private entity under contract with an education service district or*  
 29 *districts may provide services and facilities, including but not limited to central purchasing, library,*  
 30 *curriculum material, special teachers and special programs including but not limited to teachers and*  
 31 *programs under ORS chapter 343 and any other relevant services to all school districts which are a*  
 32 *part of the education service district or districts. If the education service district owns a planetarium,*  
 33 *the district may promote public events and may sell tickets for public events at the planetarium.]* **An**  
 34 **education service district shall provide regionalized core services to component school dis-**  
 35 **tricts. The goals of these services are to:**

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

38 (b) **Improve student learning;**

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

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

41 (e) **Enable equitable access to resources by component school districts and the students**  
 42 **who attend schools in those districts; and**

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

44 (2) **The services provided by an education service district shall be provided according to**  
 45 **a local service plan developed by the education service district in consultation with compo-**

1 **ment school districts. The education service district shall develop the local service plan to**  
 2 **meet the goals specified in subsection (1) of this section. The local service plan must include**  
 3 **services in at least the following areas:**

4 (a) **Programs for children with special needs, including but not limited to special educa-**  
 5 **tion services, alternative education services and professional development for employees who**  
 6 **provide those services.**

7 (b) **Technology support for component school districts, including but not limited to**  
 8 **technology infrastructure services, data services, instructional technology services and pro-**  
 9 **fessional development for employees who provide those services.**

10 (c) **School improvement services for component school districts, including but not limited**  
 11 **to services designed to support component school districts in meeting the requirements of**  
 12 **state and federal law, services designed to allow the education service district to participate**  
 13 **and facilitate a review of the state and federal standards related to the provision of a quality**  
 14 **education by component school districts, services designed to support and facilitate contin-**  
 15 **uous school improvement planning, services designed to address school-wide behavior and**  
 16 **climate issues and professional technical education and professional development for em-**  
 17 **ployees who provide those services.**

18 (d) **Administrative and support services for component school districts, including but not**  
 19 **limited to services designed to consolidate component school district business functions, li-**  
 20 **aison services between the Department of Education and component school districts, regis-**  
 21 **tration of children being taught by a private teacher, parent or legal guardian pursuant to**  
 22 **ORS 339.035 and support and coordination for component school districts.**

23 (e) **Other service areas for which an education service district is required to provide**  
 24 **services by state or federal law.**

25 (3) **In addition to the services specified in subsection (2) of this section, an education**  
 26 **service district may include other services in its local service plan that are designed to meet**  
 27 **regional needs.**

28 *[(2) The extent and nature of such facilities and services must be:]*

29 *[(a)]* (4) **The local service plan must be** agreed upon on or before March 1 by resolution of  
 30 two-thirds of the component school districts *[which]* **that** are a part of the education service district  
 31 *[or districts and which]* **and that** have at least a majority of the pupils included in the average daily  
 32 membership of the education service district *[or districts]*, as determined by the reports of such  
 33 school districts for the preceding year, enrolled in the schools of the **school** districts.*]; and]*

34 *[(b) Within the authority of the interested districts.]*

35 *[(3) Notwithstanding subsection (2) of this section, the education service district or a school district*  
 36 *or other public or private entity under contract with an education service district may provide facilities*  
 37 *and services of the type specified in subsection (1) of this section by agreement and on a reimbursable*  
 38 *basis to any school district or combination thereof within the education service district.]*

39 *[(4) Subject to subsections (1) and (2) of this section and ORS 334.185, the education service district*  
 40 *may establish or participate in all programs under ORS chapter 343.]*

41 (5) **An education service district may provide the services required by the local service**  
 42 **plan in combination with another education service district or with a school district. In ad-**  
 43 **dition, an education service district may contract with a public or private entity for the**  
 44 **provision of services.**

45 **SECTION 8.** ORS 334.177, as amended by section 29, chapter 695, Oregon Laws 2001, is

1 amended to read:

2 334.177. An education service district board shall expend at least 90 percent of all amounts re-  
 3 ceived from the State School Fund and at least 90 percent of all amounts considered to be local  
 4 revenues of an education service district, as defined in ORS 327.019, on services [*or programs*] **re-**  
 5 **quired by the local service plan** that [*have*] **has** been approved by the component school districts  
 6 of the education service district through the resolution process described in ORS 334.175.

7 **SECTION 9.** ORS 334.185 is amended to read:

8 334.185. (1) [*Facilities and services authorized under ORS 334.175 (1) may be provided to compo-*  
 9 *nent school districts which are not a part of the education service district or districts by agreement on*  
 10 *a reimbursable basis. However, the pupils residing in such districts shall not be included in the com-*  
 11 *putation of the percentage required by ORS 334.175 (2)(a). The facilities and services may also be*  
 12 *provided to other public or private entities by agreement or on a reimbursable basis.*] **An education**  
 13 **service district may provide services to public and private entities and to school districts**  
 14 **that are not component school districts of the education service district if the services are**  
 15 **part of the local service plan developed pursuant to ORS 334.175 and the services are ap-**  
 16 **proved by the State Board of Education based on criteria adopted by the board by rule. The**  
 17 **services may be provided by contract or on a reimbursable basis.**

18 (2) Expenditures by the education service district board for [*special*] services [*and facilities*]  
 19 provided on a reimbursable basis under this section shall be limited to the moneys received for the  
 20 purpose specified and are not subject to the Local Budget Law (ORS 294.305 to 294.565).

21 (3) Budget estimates of expenditures for [*special services and facilities*] **services** provided under  
 22 this section must show the estimates of moneys receivable and must be shown as offsetting revenue  
 23 items.

24 **SECTION 10.** ORS 334.125 is amended to read:

25 334.125. (1) The education service district is a body corporate.

26 (2) The education service district board is authorized to transact all business coming within the  
 27 jurisdiction of the education service district and may sue and be sued.

28 (3) The education service district board shall perform all duties required by law, including but  
 29 not limited to:

30 (a) Distribution of such school funds as it is empowered to apportion;

31 (b) Conduct of audits;

32 (c) Duties as district boundary board;

33 (d) Budget and tax levying duties, including the levying of taxes under ORS 280.060;

34 (e) Contracting a bonded indebtedness and levying direct ad valorem taxes on all taxable prop-  
 35 erty within the education service district in the manner that component school districts are au-  
 36 thorized to issue bonds and levy taxes under ORS 328.205 to 328.304 and other laws applicable to  
 37 the issuance of bonds and levying of taxes by school districts; and

38 (f) Creating a county education bond district under ORS 328.304 from a county within the dis-  
 39 trict.

40 [(4) *In addition to its duties under subsection (3) of this section and duties arising under ORS*  
 41 *334.175, with the approval of the component school districts through the resolution process described*  
 42 *in ORS 334.175, the board may:]*

43 [(a) *Plan for the provision and delivery of education, including curriculum improvement and special*  
 44 *education programs;]*

45 [(b) *Provide staff development;]*

1        *[(c) Conduct assessment, evaluation and research;]*

2        *[(d) Plan and provide for new learning environments;]*

3        *[(e) Plan and provide for educational communication and distribution services, including telecom-*  
 4 *munications systems;]*

5        *[(f) Collaborate in jointly planning for the delivery of health care, employment training and social*  
 6 *services in the region; and]*

7        **[(g)] (4) In addition to its duties under subsection (3) of this section, an education service**  
 8 **district board may provide services required by the local service plan developed pursuant to**  
 9 **ORS 334.175 and may** provide funds to component school districts to provide services in lieu of  
 10 those school districts receiving services from the education service district.

11        (5) The education service district board may employ and fix the compensation of such personnel  
 12 as it considers necessary for carrying out duties of the board.

13        (6) In carrying out its duties, the education service district board:

14        (a) May locate, buy, accept by gift or lease such land, buildings and facilities as may be required  
 15 for district purposes. Leases authorized by this section may be for a term of up to 30 years and  
 16 include lease-purchase agreements whereunder the district may acquire ownership of the leased  
 17 property.

18        (b) May acquire personal property by a lease-purchase agreement or contract of purchase for a  
 19 term exceeding one year. A lease-purchase agreement is one in which the rent payable by the dis-  
 20 trict is expressly agreed to have been established to reflect the savings resulting from the exemption  
 21 from taxation, and the district is entitled to ownership of the property at a nominal or other price  
 22 which is stated or determinable by the terms of the agreement and was not intended to reflect the  
 23 true value of the property.

24        (c) May lease property or sell and convey property of the district as the board considers un-  
 25 necessary to its purposes.

26        (d) May purchase relocatable structures in installment transactions in which deferred install-  
 27 ments of the purchase price are payable over not more than 10 years from the date of delivery of  
 28 the property to the district and are secured by a security interest in the property. The transactions  
 29 may take the form of, but are not limited to, lease-purchase agreements.

30        (e) May accept money or property donated for the use or benefit of the district and use the  
 31 money or property for the purpose for which it was donated.

32        (7) The education service district board may adopt rules it considers necessary to carry out the  
 33 duties of the board.

34        (8) The education service district may contract with public and private entities for service de-  
 35 livery.

36        (9)(a) The education service district shall work cooperatively with component school districts  
 37 and review periodically with component school districts the operations of component school districts  
 38 and shall submit to the component school districts plans for operations that achieve economies and  
 39 efficiencies through consolidation of various operations of all or some of the districts. The education  
 40 service district and its component school districts shall submit an annual report on the effectiveness  
 41 of the consolidation of operations to the State Board of Education.

42        (b) As used in this subsection, “operations” means services involving transportation, payroll,  
 43 student records, auditing, legal services, insurance, printing, investment and other similar services.

44        **SECTION 11.** ORS 334.240 is amended to read:

45        334.240. (1) The education service district board shall be subject in all respects to the Local

1 Budget Law (ORS 294.305 to 294.565), except that in addition to other qualifications, members of the  
 2 budget committee who are not members of the education service district board shall be members of  
 3 component school district boards within the education service district or shall be designees of a  
 4 school district board.

5 (2) Notwithstanding ORS 294.336 and 294.341, a majority of the members of the budget commit-  
 6 tee of an education service district must consist of members of the component school district boards  
 7 or designees of a school district board. The budget committee may meet to conduct business if the  
 8 education service district board is unable to fill all of the positions on the budget committee.

9 (3) The board of the education service district is authorized to prepare and adopt a budget for  
 10 its own expenses and for its operational, administrative and resolution services expenses. The  
 11 board's own expenses include expenses for travel, for providing the board with professional and  
 12 clerical assistance, and for such services, equipment and supplies as the board may require. The  
 13 board's budget may include amounts necessary to provide [*special services and facilities authorized*  
 14 *by ORS 334.175 (1) and (2), and to support providing services and programs for children with disa-*  
 15 *bilities, for the talented and gifted or for bilingual or English as a second language education as these*  
 16 *programs are described in ORS 336.074, 336.079, 343.035, 343.397 and 343.830] **services required by**  
 17 **the local service plan of the district developed under ORS 334.175.***

18 **SECTION 12.** ORS 343.221 is amended to read:

19 343.221. In order to provide special education for children with disabilities, the district school  
 20 board of any school district in which there are school-age children who require special education:

21 (1) Shall submit an annual projected activities and cost statement to the Superintendent of  
 22 Public Instruction for a program of special education for the district's children with disabilities. The  
 23 proposed district program shall include provisions for providing special education and related ser-  
 24 vices and be designed to meet the unique needs of all resident children with disabilities.

25 (2) Shall provide special education for such children consistent with the projected activities and  
 26 cost statement.

27 (3) May, when the board considers a contract to be economically feasible and in the interests  
 28 of the learning opportunities of eligible children, contract for special education for such children  
 29 with another school district or an education service district if:

30 (a) The district school boards jointly agree to provide special education.

31 (b) **The contract is consistent with the local service plan of the education service district**  
 32 **developed pursuant to ORS 334.175 and** the school districts within the education service district  
 33 approve the contract by a resolution adopted in the manner provided in ORS 334.175 [(2)].

34 [(c) *Any school district within the education service district contracts with the education service*  
 35 *district in the manner provided in ORS 334.175 (3) for such special education.*]

36 (c) **The school district contracts with an education service district pursuant to ORS**  
 37 **334.185.**

38 (4) May contract with private agencies or organizations approved by the State Board of Educa-  
 39 tion for special education.

40 (5) May use the services of public agencies, including community mental health and develop-  
 41 mental disabilities programs, which provide diagnostic, evaluation and other related services for  
 42 children.

43 (6) May contract for the provision of related services by a person in private practice if that  
 44 person is registered, certified or licensed by the State of Oregon as qualified to provide a particular  
 45 related service that requires registration, certification or licensing by the state.

**SECTION 13.** ORS 326.712 is amended to read:

326.712. The Superintendent of Public Instruction may contract with an education service district or a school district to provide teachers, counselors or other personnel for the Youth Corrections Education Program and the Juvenile Detention Education Program. However, the programs may not be considered a component district and the students enrolled in the programs may not be counted in determining the number of pupils in average daily membership for purposes of ORS 334.175 [(2)(a)] (4).

**SECTION 14.** ORS 334.010 is amended to read:

334.010. There is created in each region a district to be known as the education service district. *[to consist of the counties and the area of the common school districts as listed in ORS 334.020, with a governing body thereof to be]* **Each education service district shall elect a board of directors as provided in ORS 334.090, to be known as the education service district board and to serve as its governing body.**

**SECTION 15.** ORS 334.020 is amended to read:

334.020. *[(1) On and after the effective date of the order entered under section 25, chapter 784, Oregon Laws 1993, except as the boundaries of an education service district may be changed by merger under ORS 334.710 to 334.770 or other provision of law, the education service districts are as follows:]*

- [(a) Region 1. Clatsop, Columbia, Tillamook and Washington Counties.]*
- [(b) Region 2. Multnomah County.]*
- [(c) Region 3. Marion and Polk Counties.]*
- [(d) Region 4. Lincoln, Linn and Benton Counties.]*
- [(e) Region 5. Lane County.]*
- [(f) Region 6. Douglas County.]*
- [(g) Region 7. Coos and Curry Counties and the area lying within the Reedsport School District.]*
- [(h) Region 8. Jackson, Josephine and Klamath Counties.]*
- [(i) Region 9. Hood River and Wasco Counties.]*
- [(j) Region 10. Crook and Deschutes Counties.]*
- [(k) Region 11. Lake County.]*
- [(L) Region 12. Umatilla and Morrow Counties.]*
- [(m) Region 13. Union and Baker Counties.]*
- [(n) Region 14. Malheur County and the area comprising the Huntington School District.]*
- [(o) Region 15. Clackamas County.]*
- [(p) Region 16. Yamhill County.]*
- [(q) Region 17. Harney County.]*
- [(r) Region 18. Wallowa County.]*
- [(s) Region 19. Sherman, Gilliam and Wheeler Counties.]*
- [(t) Region 20. Grant County.]*
- [(u) Region 21. Jefferson County and the area comprising the Warm Springs Reservation.]*

[(2) Where] **If** a boundary change or formation of a component school district results in a joint school district, the joint school district shall be included in the education service district in which the joint district's administrative office is located.

**SECTION 16.** ORS 334.025 is amended to read:

334.025. (1) The board of directors of an education service district shall consist of seven, nine or 11 members.



1 (2) In education service districts, not fewer than five of the directors shall be elected, one from  
 2 each of the zones established under ORS 334.032 **or section 3 of this 2005 Act**. At the discretion  
 3 of the board of directors, one or two board members may be elected from the district at large.

4 (3) On the petition of two component school districts, the board shall establish local advisory  
 5 committees to represent the interests of areas within the petitioning districts. The local advisory  
 6 committees shall advise the board on matters of concern within the advisory committee's area. Local  
 7 advisory committees shall represent two or more component school districts.

8 (4) The board of directors may by resolution increase or decrease the number of members of the  
 9 board. The board's resolution shall be entered with sufficient time for the board to give the required  
 10 information to the elections officer under ORS 255.069, and the board's resolution shall have no ef-  
 11 fect on the terms of any current board members.

12 **SECTION 17.** ORS 334.090 is amended to read:

13 334.090. (1) The term of office of director of an education service district shall be four years.

14 (2) The term of office of each director of an education service district shall begin on July 1 next  
 15 following the date of election. A director shall serve until June 30 next following the election of a  
 16 successor.

17 (3) A director of an education service district must qualify by taking an oath of office before  
 18 assuming the duties of office.

19 (4) A newly appointed director of an education service district shall take office at the meeting  
 20 of the education service district board next following the appointment.

21 (5) A person is not eligible to serve as a director of an education service district unless the  
 22 person is an elector of the district and has resided therein for a period of one year immediately  
 23 preceding the election or appointment.

24 (6) No employee of an education service district is eligible to serve as a director of the educa-  
 25 tion service district by which the employee is employed.

26 (7) A regular district election shall be held in a district to fill any vacancy and to elect a suc-  
 27 cesssor for any director whose term expires June 30 next following the election. A successor shall  
 28 be elected as follows:

29 (a) If the director was elected from a zone established under ORS 334.032 **or section 3 of this**  
 30 **2005 Act**, a successor from the same zone shall be elected by the electors of the zone.

31 (b) If the director was elected at large a successor shall be elected at large by the electors of  
 32 the district.

33 (8) Notwithstanding subsection (7) of this section, in any district having a population of 550,000  
 34 or more according to the latest federal census that becomes zoned according to ORS 334.032 **or**  
 35 **section 3 of this 2005 Act**, the board shall determine prior to the nomination of school directors  
 36 which positions shall be from zones and which positions shall be at large.

37 (9) Any vacancy on the board from any zone shall be filled by the remaining directors from  
 38 among the qualified persons in that zone. Any such vacancy from the district at large shall be filled  
 39 by the remaining directors from among the qualified persons in the district. However, if vacancies  
 40 occur in a majority of the positions on the board, the State Board of Education shall fill the va-  
 41 cancies from among the qualified persons of the zones, if any, or from among other persons who are  
 42 qualified to serve. The period of service of an appointee under this subsection expires June 30 next  
 43 following the next regular district election at which a successor is elected. The successor shall be  
 44 elected to serve the remainder, if any, of the term for which the appointment was made. If the term  
 45 for which the appointment was made expires June 30 after the election of the successor, the suc-

1 cessor shall be elected to a full term. In either case, the successor shall take office July 1 next  
2 following the election.

3 **SECTION 18.** ORS 243.650 is amended to read:

4 243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

5 (1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board  
6 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-  
7 ever, an appropriate bargaining unit cannot include both academically licensed and unlicensed or  
8 nonacademically licensed school employees. Academically licensed units may include but are not  
9 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and  
10 similar positions. This limitation shall not apply to any bargaining unit certified or recognized prior  
11 to June 6, 1995, [or] to any school district with fewer than 50 employees **or to any education ser-**  
12 **vice district.**

13 (2) "Board" means the Employment Relations Board.

14 (3) "Certification" means official recognition by the board that a labor organization is the ex-  
15 clusive representative for all of the employees in the appropriate bargaining unit.

16 (4) "Collective bargaining" means the performance of the mutual obligation of a public employer  
17 and the representative of its employees to meet at reasonable times and confer in good faith with  
18 respect to employment relations for the purpose of negotiations concerning mandatory subjects of  
19 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute  
20 concerning the interpretation or application of a collective bargaining agreement, and to execute  
21 written contracts incorporating agreements that have been reached on behalf of the public employer  
22 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and  
23 negotiate does not compel either party to agree to a proposal or require the making of a concession.  
24 Nothing in this subsection shall be construed to prohibit a public employer and a certified or re-  
25 cognized representative of its employees from discussing or executing written agreements regarding  
26 matters other than mandatory subjects of bargaining that are not prohibited by law, so long as there  
27 is mutual agreement of the parties to discuss these matters, which are permissive subjects of bar-  
28 gaining.

29 (5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute  
30 are required by law to submit their differences to a third party for a final and binding decision.

31 (6) "Confidential employee" means one who assists and acts in a confidential capacity to a per-  
32 son who formulates, determines and effectuates management policies in the area of collective bar-  
33 gaining.

34 (7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indi-  
35 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of  
36 employment.

37 (b) "Employment relations" does not include subjects determined to be permissive, nonmanda-  
38 tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

39 (c) After June 6, 1995, "employment relations" shall not include subjects which the Employment  
40 Relations Board determines to have a greater impact on management's prerogative than on employee  
41 wages, hours, or other terms and conditions of employment.

42 (d) "Employment relations" shall not include subjects that have an insubstantial or de minimis  
43 effect on public employee wages, hours, and other terms and conditions of employment.

44 (e) For school district bargaining, "employment relations" shall expressly exclude class size, the  
45 school or educational calendar, standards of performance or criteria for evaluation of teachers, the

1 school curriculum, reasonable dress, grooming and at-work personal conduct requirements respect-  
2 ing smoking, gum chewing and similar matters of personal conduct, the standards and procedures  
3 for student discipline, the time between student classes, the selection, agendas and decisions of 21st  
4 Century Schools Councils established under ORS 329.704, and any other subject proposed that is  
5 permissive under paragraphs (b), (c) and (d) of this subsection.

6 (f) For all other employee bargaining except school districts, "employment relations" expressly  
7 excludes staffing levels and safety issues (except those staffing levels and safety issues which have  
8 a direct and substantial effect on the on-the-job safety of public employees), scheduling of services  
9 provided to the public, determination of the minimum qualifications necessary for any position, cri-  
10 teria for evaluation or performance appraisal, assignment of duties, workload when the effect on  
11 duties is insubstantial, reasonable dress, grooming, and at-work personal conduct requirements re-  
12 specting smoking, gum chewing, and similar matters of personal conduct at work, and any other  
13 subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

14 (8) "Exclusive representative" means the labor organization that, as a result of certification by  
15 the board or recognition by the employer, has the right to be the collective bargaining agent of all  
16 employees in an appropriate bargaining unit.

17 (9) "Fact-finding" means identification of the major issues in a particular labor dispute by one  
18 or more impartial individuals who review the positions of the parties, resolve factual differences and  
19 make recommendations for settlement of the dispute.

20 (10) "Fair-share agreement" means an agreement between the public employer and the recog-  
21 nized or certified bargaining representative of public employees whereby employees who are not  
22 members of the employee organization are required to make an in-lieu-of-dues payment to an em-  
23 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition  
24 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union  
25 security agreement declaring they desire that such agreement be rescinded, the board shall take a  
26 secret ballot of the employees in such unit and certify the results thereof to the recognized or cer-  
27 tified bargaining representative and to the public employer. Unless a majority of the votes cast in  
28 an election favor such union security agreement, the board shall certify deauthorization thereof. A  
29 petition for deauthorization of a union security agreement must be filed not more than 90 calendar  
30 days after the collective bargaining agreement is executed. Only one such election shall be con-  
31 ducted in any appropriate bargaining unit during the term of a collective bargaining agreement be-  
32 tween a public employer and the recognized or certified bargaining representative.

33 (11) "Final offer" means the proposed contract language and cost summary submitted to the  
34 mediator within seven days of the declaration of impasse.

35 (12) "Labor dispute" means any controversy concerning employment relations or concerning the  
36 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to  
37 arrange terms or conditions of employment relations, regardless of whether the disputants stand in  
38 the proximate relation of employer and employee.

39 (13) "Labor organization" means any organization that has as one of its purposes representing  
40 employees in their employment relations with public employers.

41 (14) "Last best offer package" means the offer exchanged by parties not less than 14 days prior  
42 to the date scheduled for an interest arbitration hearing.

43 (15) "Legislative body" means the Legislative Assembly, the city council, the county commission  
44 and any other board or commission empowered to levy taxes.

45 (16) "Managerial employee" means an employee of the State of Oregon who possesses authority

1 to formulate and carry out management decisions or who represents management's interest by tak-  
2 ing or effectively recommending discretionary actions that control or implement employer policy,  
3 and who has discretion in the performance of these management responsibilities beyond the routine  
4 discharge of duties. A "managerial employee" need not act in a supervisory capacity in relation to  
5 other employees. Notwithstanding this subsection, "managerial employee" shall not be construed  
6 to include faculty members at a community college, college or university.

7 (17) "Mediation" means assistance by an impartial third party in reconciling a labor dispute  
8 between the public employer and the exclusive representative regarding employment relations.

9 (18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclu-  
10 sive representative in negotiations and contract administration of all persons in an appropriate  
11 bargaining unit who are not members of the organization serving as exclusive representative of the  
12 employees. The payment shall be equivalent to regular union dues and assessments, if any, or shall  
13 be an amount agreed upon by the public employer and the exclusive representative of the employees.

14 (19) "Public employee" means an employee of a public employer but does not include elected  
15 officials, persons appointed to serve on boards or commissions, incarcerated persons working under  
16 section 41, Article I of the Oregon Constitution, or persons who are confidential employees, super-  
17 visory employees or managerial employees.

18 (20) "Public employer" means the State of Oregon, and the following political subdivisions:  
19 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-  
20 politan service districts, public service corporations or municipal corporations and public and  
21 quasi-public corporations.

22 (21) "Public employer representative" includes any individual or individuals specifically desig-  
23 nated by the public employer to act in its interests in all matters dealing with employee represen-  
24 tation, collective bargaining and related issues.

25 (22) "Strike" means a public employee's refusal in concerted action with others to report for  
26 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his  
27 or her absence in whole or in part from the full, faithful or proper performance of his or her duties  
28 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,  
29 compensation, rights, privileges or obligations of public employment; however, nothing shall limit  
30 or impair the right of any public employee to lawfully express or communicate a complaint or  
31 opinion on any matter related to the conditions of employment.

32 (23) "Supervisory employee" means any individual having authority in the interest of the em-  
33 ployer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline  
34 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-  
35 commend such action, if in connection therewith, the exercise of such authority is not of a merely  
36 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-  
37 sory status in any Employment Relations Board proceeding or in negotiations for any collective  
38 bargaining agreement shall not thereafter prevent assertion of supervisory status in any subsequent  
39 board proceeding or contract negotiation. Notwithstanding the provisions of this subsection, no  
40 nurse, charge nurse or similar nursing position shall be deemed to be supervisory unless such posi-  
41 tion has traditionally been classified as supervisory.

42 (24) "Unfair labor practice" means the commission of an act designated an unfair labor practice  
43 in ORS 243.672.

44 (25) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute  
45 mutually agree to submit their differences to a third party for a final and binding decision.

1        **SECTION 19.** ORS 334.022 is repealed.

2        **SECTION 20.** The amendments to ORS 334.010, 334.020, 334.025 and 334.090 by sections 14  
3 to 17 of this 2005 Act and the repeal of ORS 334.022 by section 19 of this 2005 Act become  
4 operative on July 1, 2007.

5        **SECTION 21.** This 2005 Act being necessary for the immediate preservation of the public  
6 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect  
7 July 1, 2005.

8

---