

A-Engrossed
Senate Bill 228

Ordered by the Senate July 6
Including Senate Amendments dated July 6

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 Senate Interim Committee on Education for Oregon Coalition for Promoting Physical Activity)

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.

Establishes minimum amount of participation in physical education by kindergarten through grade 8 public school students. Specifies requirements for physical education instruction. **Becomes operative July 1, 2017.**

Establishes Physical Education Fund. Appropriates moneys in fund to Department of Education for physical education grants to school districts and public charter schools. Directs department to convene advisory committee to develop rules and criteria for physical education grant program.

Directs department to collect data relating to physical education and report to Legislative Assembly about data.

A BILL FOR AN ACT

1
2 Relating to physical education; creating new provisions; amending ORS 336.631, 338.025 and 338.115;
3 and appropriating money.

4 Whereas in Oregon 28 percent of eighth graders and 21 percent of eleventh graders are cur-
5 rently overweight; and

6 Whereas between 1994 and 2001, obesity among Oregon adults had increased by 59 percent, with
7 Oregon's current adult obesity rate estimated at 22 percent-the highest in any state west of the
8 Rockies; and

9 Whereas physical inactivity and a poor diet together account for at least 400,000 deaths among
10 adults in the United States each year, which is second only to tobacco use as the leading cause of
11 preventable death in the United States; and

12 Whereas inadequate participation in physical activity is the major contributor to the "epidemic
13 of obesity" that has plagued the nation's young people during the past two decades; and

14 Whereas the Centers for Disease Control and Prevention, in their Community Service Guide, has
15 given their highest level of evidence-based endorsement to increasing children's physical activity
16 and aerobic capacity through physical education; and

17 Whereas physical activity offers young people many health benefits, including helping to control
18 weight, building lean muscle and reducing fat, improving aerobic endurance and muscular strength,
19 helping to build greater bone mass, which prevents osteoporosis in adulthood, reducing the risk of
20 diabetes, preventing or reducing high blood pressure and developing healthy habits that will last a
21 lifetime; now, therefore,

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

23 **SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS chapter 329.**

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 **SECTION 2.** (1) Every public school student in kindergarten through grade 8 shall par-
2 ticipate in physical education for the entire school year. Students in kindergarten through
3 grade 5 shall participate in physical education for at least 150 minutes during each school
4 week. Students in grades 6 through 8 shall participate in physical education for at least 225
5 minutes during each school week.

6 (2) School districts and public charter schools shall offer instruction in physical educa-
7 tion that meets the academic content standards for physical education adopted by the State
8 Board of Education under ORS 329.045. The instruction shall be a sequential, developmentally
9 appropriate curriculum that is designed, implemented and evaluated to help students develop
10 the knowledge, motor skills, self-management skills, attitudes and confidence needed to
11 adopt and maintain physical activity throughout their lives.

12 (3) School districts and public charter schools shall devote at least 50 percent of physical
13 education class time to actual physical activity in each school week, with as much class time
14 as possible spent in moderate physical activity.

15 (4)(a) Notwithstanding subsections (1) and (3) of this section, a student with disabilities
16 shall have suitably adapted physical education incorporated as part of the individualized ed-
17 ucation program developed for the student under ORS 343.151.

18 (b) Notwithstanding subsections (1) and (3) of this section, a student who does not have
19 an individualized education program but has chronic health problems, other disabling condi-
20 tions or other special needs that preclude the student from participating in regular physical
21 education instruction shall have suitably adapted physical education incorporated as part of
22 an individualized health plan developed for the student by the school district or public char-
23 ter school.

24 (5) School districts and public charter schools shall assess school curriculums at regular
25 intervals to measure the attainment of the minimum number of minutes that students are
26 required to participate in physical education under this section.

27 (6) All teachers of physical education in kindergarten through grade 8 public schools shall
28 be adequately prepared and shall regularly participate in professional development activities
29 to effectively deliver the physical education program.

30 (7) Each school year the Department of Education shall collect and make available to the
31 public information on every elementary and middle public school regarding the number of
32 minutes of physical education instruction provided to students.

33 **SECTION 3.** ORS 336.631 is amended to read:

34 336.631. (1) Prior to contracting with or distributing any public funds to a private alternative
35 education program, a district school board shall:

36 (a) Annually approve the private alternative education program;

37 (b) Determine that the private alternative education program is registered with the Department
38 of Education; and

39 (c) Determine that the private alternative education program complies with the requirements
40 of subsection (2) of this section and ORS 336.625 (3)(c).

41 (2) The following laws shall apply to private alternative education programs that are registered
42 with the Department of Education under ORS 336.635 in the same manner as the laws apply to
43 school districts and public schools:

44 (a) Federal law;

45 (b) ORS 181.539, 326.603, 326.607 and 342.232 (criminal records checks);

1 **(c) Section 2 of this 2005 Act (physical education);**

2 [(c)] **(d)** ORS 337.150, 339.141, 339.147 and 339.155 (tuition and fees);

3 [(d)] **(e)** ORS 659.850 and 659.855 (discrimination);

4 [(e)] **(f)** Health and safety statutes and rules; and

5 [(f)] **(g)** Any statute, rule or school district policy that is specified in a contract between the
6 school district board and the private alternative education program.

7 (3) Prior to placement of a student in a private alternative education program, the resident
8 district shall determine whether the proposed placement best serves the student’s educational needs
9 and interests and assists the student in achieving the district and state academic standards.

10 (4) Contracts between a school district and a private alternative education program shall be
11 included in the assessment of effectiveness provided for in ORS 329.085.

12 **SECTION 4.** ORS 338.115 is amended to read:

13 338.115. (1) Statutes and rules that apply to school district boards, school districts or other
14 public schools shall not apply to public charter schools. However, the following laws shall apply to
15 public charter schools:

16 (a) Federal law;

17 (b) ORS 192.410 to 192.505 (public records law);

18 (c) ORS 192.610 to 192.690 (public meetings law);

19 (d) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);

20 (e) ORS 181.539, 326.603, 326.607 and 342.232 (criminal records checks);

21 (f) ORS 337.150 (textbooks);

22 (g) ORS 339.141, 339.147 and 339.155 (tuition and fees);

23 (h) ORS 659.850 and 659.855 (discrimination);

24 (i) ORS 30.260 to 30.300 (tort claims);

25 (j) Health and safety statutes and rules;

26 (k) Any statute or rule that is listed in the charter;

27 (L) The statewide assessment system developed by the Department of Education for mathemat-
28 ics, science and English under ORS 329.485 (1);

29 (m) ORS 329.045 (academic content standards and instruction);

30 **(n) Section 2 of this 2005 Act (physical education);**

31 [(n)] **(o)** Any statute or rule that establishes requirements for instructional time provided by a
32 school during each day or during a year;

33 [(o)] **(p)** ORS 339.250 (12) (prohibition on infliction of corporal punishment); and

34 [(p)] **(q)** This chapter.

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

38 (3) If a statute or rule applies to a public charter school, then the terms “school district” and
39 “public school” shall include public charter school as those terms are used in that statute or rule.

40 (4) A public charter school shall not violate the Establishment Clause of the First Amendment
41 to the United States Constitution or section 5, Article I of the Oregon Constitution, or be religion
42 based.

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

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

45 (7) The sponsor, members of the governing board of the sponsor acting in their official capacity

1 and employees of a sponsor acting in their official capacity are immune from civil liability with re-
2 spect to all activities related to a public charter school within the scope of their duties or employ-
3 ment.

4 (8) A public charter school may enter into contracts and may lease facilities and services from
5 a school district, education service district, state institution of higher education, other governmental
6 unit or any person or legal entity.

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

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

11 (11) The school district in which the public charter school is located shall offer a high school
12 diploma, certificate, Certificate of Initial Mastery or Certificate of Advanced Mastery to any public
13 charter school student who meets the district's and state's standards for a high school diploma,
14 certificate, Certificate of Initial Mastery or Certificate of Advanced Mastery. If the school district
15 offers a Certificate of Initial Mastery subject area endorsement to students who attend school in the
16 district, then the school district shall offer the endorsement to any public charter school student
17 who meets the district's and state's standards for the endorsement.

18 (12) A high school diploma, certificate, Certificate of Initial Mastery, Certificate of Initial Mas-
19 tery subject area endorsement or Certificate of Advanced Mastery issued by a public charter school
20 shall grant to the holder the same rights and privileges as a high school diploma, certificate, Cer-
21 tificate of Initial Mastery, Certificate of Initial Mastery subject area endorsement or Certificate of
22 Advanced Mastery issued by a nonchartered public school.

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

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

28 **SECTION 5.** ORS 338.025 is amended to read:

29 338.025. (1) The State Board of Education may adopt any rules necessary for the implementation
30 of this chapter. The rules shall follow the intent of this chapter.

31 (2) Upon application by a public charter school, the State Board of Education may grant a
32 waiver of any provision of this chapter if the waiver promotes the development of programs by
33 providers, enhances the equitable access by underserved families to the public education of their
34 choice, extends the equitable access to public support by all students or permits high quality pro-
35 grams of unusual cost. The State Board of Education may not waive any appeal provision in this
36 chapter or any provision under ORS 338.115 (1)(a) to [(o)] (p).

37 **SECTION 6.** Section 2 of this 2005 Act and the amendments to ORS 336.631, 338.025 and
38 338.115 by sections 3 to 5 of this 2005 Act first apply to the 2017-2018 school year.

39 **SECTION 7.** Section 2 of this 2005 Act and the amendments to ORS 336.631, 338.025 and
40 338.115 by sections 3 to 5 of this 2005 Act become operative on July 1, 2017.

41 **SECTION 8.** (1) There is established the Physical Education Fund, separate and distinct
42 from the General Fund.

43 (2) The moneys in the Physical Education Fund are appropriated continuously to the
44 Department of Education for purposes of the grant program created by section 9 of this 2005
45 Act.

1 **SECTION 9.** (1) Beginning with the 2007-2009 biennium, in addition to those moneys dis-
2 tributed through the State School Fund, the Department of Education shall award grants to
3 school districts and public charter schools to enable the districts and schools to meet the
4 requirements of section 2 of this 2005 Act. The goal of the grant program is to award grants
5 each biennium to school districts and public charter schools to achieve full compliance with
6 section 2 of this 2005 Act prior to the operative date of section 2 of this 2005 Act.

7 (2) The State Board of Education shall adopt any rules necessary for the administration
8 of this section.

9 **SECTION 10.** Sections 8 and 9 of this 2005 Act are repealed on June 30, 2017.

10 **SECTION 11.** (1) During the 2005-2007 biennium, the Department of Education shall con-
11 vene an advisory committee to develop rules and criteria for the physical education grant
12 program created by section 9 of this 2005 Act.

13 (2) The advisory committee shall consider the following criteria for awarding grants:

14 (a) Whether a school district or public charter school has the facilities capacity to expand
15 physical education instruction;

16 (b) Whether a school district or public charter school has demonstrated an economic or
17 geographic need for funding; and

18 (c) Whether a school district or public charter school has demonstrated readiness to in-
19 involve community partners in promoting physical activity to students.

20 (3) The advisory committee shall consider:

21 (a) Limiting the number of biennia for which a school district or public charter school
22 may receive grant funds under this section;

23 (b) Requiring a school district or public charter school that receives grant funds under
24 this section to meet the requirements of section 2 of this 2005 Act;

25 (c) Requiring a school district or public charter school that receives grant funds to use
26 the grant funds for:

27 (A) Hiring teachers to fill new physical education teaching positions established after the
28 application for grant funds was made;

29 (B) Professional development of physical education staff; and

30 (C) Purchasing equipment for physical education;

31 (d) Requiring a school district or public charter school that receives grant funds to use
32 the majority of the funds for hiring new teachers; and

33 (e) Restricting a school district or public charter school that receives grant funds from
34 using any of the funds for paying the costs of employing teachers in physical education
35 teaching positions that existed at the time the grant application was made.

36 **SECTION 12.** (1) During the 2005-2007 biennium, the Department of Education shall col-
37 lect data relating to the number of minutes of physical education that are provided to
38 kindergarten through grade 8 students by school districts and public charter schools. Based
39 on the data the department shall estimate how many additional teachers will be necessary
40 to achieve full compliance with the requirements of section 2 of this 2005 Act.

41 (2) Prior to February 1, 2007, the department shall report to the Seventy-fourth Legisla-
42 tive Assembly on the data and the estimate of additional teachers needed.

43