

House Bill 2253

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Commissioner of the Bureau of Labor and Industries Dan Gardner)

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**.

Authorizes Commissioner of Bureau of Labor and Industries, Wage and Hour Commission or State Apprenticeship and Training Council, if person has failed to comply with investigative subpoena, to petition court for order directing person to show cause for noncompliance. Directs court, if person fails to show cause, to order person to comply with subpoena and authorizes court to hold person in contempt for failure to do so. Specifies authority of commissioner and Wage and Hour Commission to conduct investigations and issue subpoenas.

A BILL FOR AN ACT

1
2 Relating to agency enforcement authority; amending ORS 651.060, 653.530, 658.220, 659A.800 and
3 660.120.

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

5 **SECTION 1.** ORS 651.060 is amended to read:

6 651.060. (1) The Commissioner of the Bureau of Labor and Industries may **conduct investi-**
7 **gations**, issue subpoenas and subpoenas duces tecum, administer oaths, obtain evidence and take
8 testimony in all matters relating to the duties required under ORS 279C.800 to 279C.870, 651.030,
9 651.050, 651.120[,] **and** 651.170[, *652.330, 653.055, 658.405 to 658.503 and 658.705 to 658.850 and wage*
10 *claims arising under ORS 653.305 to 653.350*] **and ORS chapters 652, 653, 658 and 659A** and in all
11 contested cases scheduled for hearing by the Bureau of Labor and Industries pursuant to ORS
12 chapter 183[. *Such*] **when the information sought is relevant to a lawful investigative purpose**
13 **and is reasonable in scope. The** testimony shall be taken in some suitable place in the vicinity to
14 which testimony is applicable. **The commissioner shall adopt rules for gathering information**
15 **through subpoenas or testimony. The rules must include procedures through which a party**
16 **may object to providing information. After being served with a subpoena, if a person refuses,**
17 **without reasonable cause, to be examined, to answer any question or to produce any docu-**
18 **ment or other thing as required by the subpoena, the commissioner may petition the circuit**
19 **court in the county in which the investigation is pending for an order directing the person**
20 **to show cause why the person has not complied with the subpoena and should not be held in**
21 **contempt. The commissioner shall serve the court's order upon the person in the manner**
22 **provided by ORCP 55 D. If the person fails to show cause for the noncompliance, the court**
23 **shall order the person to comply with the subpoena within such time as the court shall direct**
24 **and may hold the person in contempt.**

25 (2) Witnesses subpoenaed and testifying before any officer of the bureau shall be paid the fees
26 and mileage provided for witnesses in ORS 44.415 (2). The payment shall be made from the fund
27 appropriated for the use of the bureau[,] and in the manner provided in ORS 651.170 for the payment
28 of other expenses of the bureau.

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 (3) The commissioner [*of the Bureau of Labor and Industries*] shall employ a deputy commis-
 2 sioner and such other assistants or personnel as may be necessary to carry into effect the powers
 3 and duties of the commissioner or of the bureau [*of Labor and Industries*] and may prescribe the
 4 duties and responsibilities of [*such*] **the** employees. The commissioner may delegate any of the pow-
 5 ers of the commissioner or of the bureau to the deputy commissioner and to the other assistants
 6 employed under this subsection for the purpose of transacting the business of the commissioner's
 7 office or of the bureau. In the absence of the commissioner, the deputy commissioner and the other
 8 assistants whom the commissioner employs [*shall*] have full authority, under the commissioner's di-
 9 rection, to do and perform any duty **that** the law requires the commissioner to perform. However,
 10 the commissioner [*shall be*] **is** responsible for all acts of the deputy commissioner and of the assist-
 11 ants employed under this subsection.

12 (4) [*In accordance with any applicable provisions of ORS chapter 183, the commissioner of the*
 13 *Bureau of Labor and Industries*] **The commissioner** may adopt such reasonable rules as may be
 14 necessary to administer and enforce any statutes over which the commissioner or the bureau [*of*
 15 *Labor and Industries*] has jurisdiction.

16 (5) The commissioner [*of the Bureau of Labor and Industries*] may conduct and charge and col-
 17 lect fees for public information programs pertaining to any of the statutes over which the commis-
 18 sioner or the bureau [*of Labor and Industries*] has jurisdiction.

19 **SECTION 2.** ORS 653.530 is amended to read:

20 653.530. (1) The Wage and Hour Commission may hold meetings for the transaction of any of its
 21 business at such times and places as it may prescribe.

22 (2) The commission may hold public hearings at such times and places as it deems fit and proper
 23 for the purpose of investigating any of the matters it is authorized to investigate under ORS 653.535.

24 (3) At any such public hearing any person interested in the matter being investigated may ap-
 25 pear and testify.

26 [*(4) The commission may subpoena and compel the attendance of any witness at any such public*
 27 *hearing. Any commissioner may administer an oath to any witness who testifies at any such public*
 28 *hearing.*]

29 **(4) The commission may conduct investigations, issue subpoenas and subpoenas duces**
 30 **tecum, administer oaths, obtain evidence and take testimony in all matters relating to the**
 31 **commission's duties when the information sought is relevant to a lawful investigative pur-**
 32 **pose and is reasonable in scope. The commission shall adopt rules for gathering information**
 33 **through subpoenas or testimony. The rules must include procedures through which a party**
 34 **may object to providing information. After being served with a subpoena, if a person refuses,**
 35 **without reasonable cause, to be examined, to answer any question or to produce any docu-**
 36 **ment or other thing as required by the subpoena, the commission may petition the circuit**
 37 **court in the county in which the investigation is pending for an order directing the person**
 38 **to show cause why the person has not complied with the subpoena and should not be held in**
 39 **contempt. The commission shall serve the court's order upon the person in the manner**
 40 **provided by ORCP 55 D. If the person fails to show cause for the noncompliance, the court**
 41 **shall order the person to comply with the subpoena within such time as the court shall direct**
 42 **and may hold the person in contempt.**

43 (5) All witnesses subpoenaed by the commission shall be paid the same mileage and per diem
 44 as are allowed by law to witnesses under ORS 44.415 (2).

45 **SECTION 3.** ORS 658.220 is amended to read:

1 658.220. (1) When it appears to the Commissioner of the Bureau of Labor and Industries that
 2 any person is engaged or about to engage in an act or practice that constitutes a violation of ORS
 3 658.005 to 658.245 or the rules adopted pursuant thereto, the commissioner may, without bond, ob-
 4 tain an order from an appropriate circuit court enjoining any such act or practice. The court may
 5 award reasonable attorney fees to the commissioner if the commissioner prevails in an action under
 6 this subsection. The court may award reasonable attorney fees to a defendant who prevails in an
 7 action under this subsection if the court determines that the commissioner had no objectively rea-
 8 sonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the
 9 trial court.

10 *[(2) The commissioner may issue subpoenas in any investigation in a contested case the commis-*
 11 *sioner is conducting outside of a court proceeding or as otherwise necessary for the performance of any*
 12 *of the duties of the commissioner under ORS 658.005 to 658.245.]*

13 **(2) In the manner described in ORS 651.060, the commissioner may conduct investi-**
 14 **gations, issue subpoenas and subpoenas duces tecum, administer oaths, obtain evidence and**
 15 **take testimony in all matters relating to the duties required under ORS 658.005 to 658.245.**

16 **SECTION 4.** ORS 659A.800 is amended to read:

17 659A.800. (1) The Bureau of Labor and Industries may take all steps necessary to eliminate and
 18 prevent unlawful practices. To eliminate the effects of unlawful discrimination, the bureau may
 19 promote voluntarily affirmative action by employers, labor organizations, governmental agencies,
 20 private organizations and individuals and may accept financial assistance and grants or funds for
 21 *[such]* **this** purpose.

22 (2) The bureau is given general jurisdiction and power for the purpose of eliminating and pre-
 23 venting unlawful practices.

24 (3) The Commissioner of the Bureau of Labor and Industries shall employ a deputy commissioner
 25 and such other personnel as may be necessary to carry into effect the powers and duties conferred
 26 upon the bureau *[of Labor and Industries]* and the commissioner under this chapter and may pre-
 27 scribe the duties and responsibilities of *[such]* **the** employees. The commissioner may delegate any
 28 of the powers under this chapter to the deputy commissioner employed under this subsection.

29 *[(4) The commissioner or the designee of the commissioner may issue subpoenas to require the*
 30 *production of evidence necessary for the performance of any of the duties under this chapter.]*

31 **(4) In the manner described in ORS 651.060, the commissioner may conduct investi-**
 32 **gations, issue subpoenas and subpoenas duces tecum, administer oaths, obtain evidence and**
 33 **take testimony in all matters relating to the duties required under this chapter.**

34 (5) *[No]* **A** person delegated any powers or duties under this section and ORS 659A.805 *[shall]*
 35 **may not** act as prosecutor and examiner in processing any violation under this chapter.

36 **SECTION 5.** ORS 660.120 is amended to read:

37 660.120. (1) The State Apprenticeship and Training Council shall enforce the provisions of ORS
 38 660.002 to 660.210 in order to carry out *[its]* **the** intent and purposes **of those provisions**. With the
 39 assistance of the State Director of Apprenticeship and Training and the director's staff, the council
 40 may conduct investigations, issue subpoenas **and subpoenas duces tecum**, obtain evidence, admin-
 41 ister oaths and take testimony in all matters relating to *[its]* **the council's** duties and functions as
 42 set forth in ORS 660.002 to 660.210*[,]* **when the information sought is relevant to a lawful in-**
 43 **vestigative purpose and is reasonable in scope. The council shall adopt rules for gathering**
 44 **information through subpoenas or testimony. The rules must include procedures through**
 45 **which a party may object to providing information. After being served with a subpoena, if a**

1 **person refuses, without reasonable cause, to be examined, to answer any question or to**
 2 **produce any document or other thing as required by the subpoena, the council may petition**
 3 **the circuit court in the county in which the investigation is pending for an order directing**
 4 **the person to show cause why the person has not complied with the subpoena and should**
 5 **not be held in contempt. The council shall serve the court's order upon the person in the**
 6 **manner provided by ORCP 55 D. If the person fails to show cause for the noncompliance,**
 7 **the court shall order the person to comply with the subpoena within such time as the court**
 8 **shall direct and may hold the person in contempt.**

9 (2) The council may bring suit in a court of proper jurisdiction in *[its]* **the council's** own name,
 10 or in the name of an apprentice on behalf of the apprentice, through the district attorney or the
 11 Attorney General.

12 (3) The council may *[make such]* **adopt** rules *[as]* **that** are reasonably necessary to enforce and
 13 administer ORS 660.002 to 660.210. *[However, all rules which the council makes under ORS 660.002*
 14 *to 660.210 shall be adopted in compliance]* **In adopting the rules, the council shall comply** with
 15 ORS chapter 183. In addition, where the council finds that it would be impractical for a number or
 16 all of the local joint committees in the state to develop criteria concerning a particular matter, the
 17 council may *[make]* **adopt** rules on *[such]* **the** matter. The council's rules shall govern on that matter
 18 except to the extent that a local joint committee's approved standards contain exceptions.

19 *[(2)]* (4) The council also shall:

20 (a) Establish policy of the program so as to encourage the promotion, expansion and improve-
 21 ment of programs of apprenticeship and training;

22 (b) Approve and register such program standards and modifications thereto, as are submitted
 23 by appropriate local joint committees as provided in ORS 660.126, which are in substantial con-
 24 formity with the statewide standards approved under ORS 660.155;

25 (c) Establish committees and approve nominations of members and alternates to local joint
 26 committees and state joint committees to *[insure]* **ensure** balanced representation of employer and
 27 employee groups;

28 (d) Deregister standards and terminate entire programs, and remove any or all members of any
 29 committee, for inactivity or inadequate activity, or for failure to abide by the provisions of ORS
 30 660.002 to 660.210 or by the rules and policies of the council;

31 (e) Cooperate with interested state and federal agencies, including the Department of Education
 32 and other providers of related training and curriculum such as community college districts, com-
 33 munity college service districts, education service districts and recognized industry programs;

34 (f) Perform such other functions and duties as are necessary or appropriate to carry out the
 35 purposes of ORS 660.002 to 660.210; and

36 (g) Hold at least four regular public meetings each year. Executive sessions shall be held on
 37 call of the chairperson, or at the written request of a majority of the members of the council.

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