

**SENATE AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2372
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

By COMMITTEE ON BUSINESS, TRANSPORTATION AND WORKFORCE DEVELOPMENT

April 30

1 On page 3 of the printed A-engrossed bill, line 10, after “(4)” insert “(a)”.

2 In line 12, after the period begin a new paragraph and insert “(b)”.

3 In line 13, after “under” insert “subsection (1) of”.

4 After line 15, insert:

5 “(c) The remainder, if any, of the sums collected as penalties under subsection (2) of this section
6 shall be paid over by the commissioner to the Department of Human Services for the benefit of the
7 Breastfeeding Mother Friendly Employer Project. The department shall issue a receipt for the
8 moneys to the commissioner.”.

9 On page 6, after line 14, insert:

10 “**SECTION 3a. If Senate Bill 400 becomes law, section 3 of this 2007 Act (amending ORS**
11 **243.650) is repealed and ORS 243.650, as amended by section 1, chapter _____, Oregon Laws**
12 **2007 (Enrolled Senate Bill 400), is amended to read:**

13 “243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

14 “(1) ‘Appropriate bargaining unit’ means the unit designated by the Employment Relations Board
15 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-
16 ever, an appropriate bargaining unit [*cannot*] **may not** include both academically licensed and unli-
17 censed or nonacademically licensed school employees. Academically licensed units may include but
18 are not limited to teachers, nurses, counselors, therapists, psychologists, child development special-
19 ists and similar positions. This limitation does not apply to any bargaining unit certified or recog-
20 nized prior to June 6, 1995, or to any school district with fewer than 50 employees.

21 “(2) ‘Board’ means the Employment Relations Board.

22 “(3) ‘Certification’ means official recognition by the board that a labor organization is the ex-
23 clusive representative for all of the employees in the appropriate bargaining unit.

24 “(4) ‘Collective bargaining’ means the performance of the mutual obligation of a public employer
25 and the representative of its employees to meet at reasonable times and confer in good faith with
26 respect to employment relations for the purpose of negotiations concerning mandatory subjects of
27 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute
28 concerning the interpretation or application of a collective bargaining agreement, and to execute
29 written contracts incorporating agreements that have been reached on behalf of the public employer
30 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and
31 negotiate does not compel either party to agree to a proposal or require the making of a concession.
32 This subsection may not be construed to prohibit a public employer and a certified or recognized
33 representative of its employees from discussing or executing written agreements regarding matters
34 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-

1 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

2 “(5) ‘Compulsory arbitration’ means the procedure whereby parties involved in a labor dispute
3 are required by law to submit their differences to a third party for a final and binding decision.

4 “(6) ‘Confidential employee’ means one who assists and acts in a confidential capacity to a per-
5 son who formulates, determines and effectuates management policies in the area of collective bar-
6 gaining.

7 “(7)(a) ‘Employment relations’ includes, but is not limited to, matters concerning direct or indi-
8 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of
9 employment.

10 “(b) ‘Employment relations’ does not include subjects determined to be permissive, nonmanda-
11 tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

12 “(c) After June 6, 1995, ‘employment relations’ does not include subjects that the Employment
13 Relations Board determines to have a greater impact on management’s prerogative than on employee
14 wages, hours, or other terms and conditions of employment.

15 “(d) ‘Employment relations’ does not include subjects that have an insubstantial or de minimis
16 effect on public employee wages, hours, and other terms and conditions of employment.

17 “(e) For school district bargaining, ‘employment relations’ does not include class size, the school
18 or educational calendar, standards of performance or criteria for evaluation of teachers, the school
19 curriculum, reasonable dress, grooming and at-work personal conduct requirements respecting
20 smoking, gum chewing and similar matters of personal conduct, the standards and procedures for
21 student discipline, the time between student classes, the selection, agendas and decisions of 21st
22 Century Schools Councils established under ORS 329.704, **requirements for expressing milk under**
23 **ORS 653.077**, and any other subject proposed that is permissive under paragraphs (b), (c) and (d)
24 of this subsection.

25 “(f) For employee bargaining involving employees covered by ORS 243.736, ‘employment re-
26 lations’ includes safety and staffing only as they relate to on-the-job safety.

27 “(g) For all other employee bargaining except school district bargaining and except as provided
28 in paragraph (f) of this subsection, ‘employment relations’ does not include staffing levels and safety
29 issues (except those staffing levels and safety issues that have a direct and substantial effect on the
30 on-the-job safety of public employees), scheduling of services provided to the public, determination
31 of the minimum qualifications necessary for any position, criteria for evaluation or performance
32 appraisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable
33 dress, grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and
34 similar matters of personal conduct at work, and any other subject proposed that is permissive un-
35 der paragraphs (b), (c) and (d) of this subsection.

36 “(8) ‘Exclusive representative’ means the labor organization that, as a result of certification by
37 the board or recognition by the employer, has the right to be the collective bargaining agent of all
38 employees in an appropriate bargaining unit.

39 “(9) ‘Fact-finding’ means identification of the major issues in a particular labor dispute by one
40 or more impartial individuals who review the positions of the parties, resolve factual differences and
41 make recommendations for settlement of the dispute.

42 “(10) ‘Fair-share agreement’ means an agreement between the public employer and the recog-
43 nized or certified bargaining representative of public employees whereby employees who are not
44 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
45 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition

1 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
2 security agreement declaring they desire that the agreement be rescinded, the board shall take a
3 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-
4 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an
5 election favor the union security agreement, the board shall certify deauthorization of the agree-
6 ment. A petition for deauthorization of a union security agreement must be filed not more than 90
7 calendar days after the collective bargaining agreement is executed. Only one such election *[shall]*
8 **may** be conducted in any appropriate bargaining unit during the term of a collective bargaining
9 agreement between a public employer and the recognized or certified bargaining representative.

10 “(11) ‘Final offer’ means the proposed contract language and cost summary submitted to the
11 mediator within seven days of the declaration of impasse.

12 “(12) ‘Labor dispute’ means any controversy concerning employment relations or concerning the
13 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to
14 arrange terms or conditions of employment relations, regardless of whether the disputants stand in
15 the proximate relation of employer and employee.

16 “(13) ‘Labor organization’ means any organization that has as one of its purposes representing
17 employees in their employment relations with public employers.

18 “(14) ‘Last best offer package’ means the offer exchanged by parties not less than 14 days prior
19 to the date scheduled for an interest arbitration hearing.

20 “(15) ‘Legislative body’ means the Legislative Assembly, the city council, the county commission
21 and any other board or commission empowered to levy taxes.

22 “(16) ‘Managerial employee’ means an employee of the State of Oregon who possesses authority
23 to formulate and carry out management decisions or who represents management’s interest by tak-
24 ing or effectively recommending discretionary actions that control or implement employer policy,
25 and who has discretion in the performance of these management responsibilities beyond the routine
26 discharge of duties. A ‘managerial employee’ need not act in a supervisory capacity in relation to
27 other employees. Notwithstanding this subsection, ‘managerial employee’ *[may not be construed to]*
28 **does not** include faculty members at a community college, college or university.

29 “(17) ‘Mediation’ means assistance by an impartial third party in reconciling a labor dispute
30 between the public employer and the exclusive representative regarding employment relations.

31 “(18) ‘Payment-in-lieu-of-dues’ means an assessment to defray the cost for services by the exclu-
32 sive representative in negotiations and contract administration of all persons in an appropriate
33 bargaining unit who are not members of the organization serving as exclusive representative of the
34 employees. The payment *[shall]* **must** be equivalent to regular union dues and assessments, if any,
35 or *[shall]* **must** be an amount agreed upon by the public employer and the exclusive representative
36 of the employees.

37 “(19) ‘Public employee’ means an employee of a public employer but does not include elected
38 officials, persons appointed to serve on boards or commissions, incarcerated persons working under
39 section 41, Article I of the Oregon Constitution, or persons who are confidential employees, super-
40 visory employees or managerial employees.

41 “(20) ‘Public employer’ means the State of Oregon, and the following political subdivisions:
42 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
43 politan service districts, public service corporations or municipal corporations and public and
44 quasi-public corporations.

45 “(21) ‘Public employer representative’ includes any individual or individuals specifically desig-

1 nated by the public employer to act in its interests in all matters dealing with employee represen-
2 tation, collective bargaining and related issues.

3 “(22) ‘Strike’ means a public employee’s refusal in concerted action with others to report for
4 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his
5 or her absence in whole or in part from the full, faithful or proper performance of his or her duties
6 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,
7 compensation, rights, privileges or obligations of public employment; however, nothing shall limit
8 or impair the right of any public employee to lawfully express or communicate a complaint or
9 opinion on any matter related to the conditions of employment.

10 “(23) ‘Supervisory employee’ means any individual having authority in the interest of the em-
11 ployer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
12 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
13 commend such action, if in connection therewith, the exercise of the authority is not of a merely
14 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-
15 sory status in any Employment Relations Board proceeding or in negotiations for any collective
16 bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent
17 board proceeding or contract negotiation. Notwithstanding the provisions of this subsection, [no] a
18 nurse, charge nurse or similar nursing position [shall] **may not** be deemed to be supervisory unless
19 [the] **that** position has traditionally been classified as supervisory.

20 “(24) ‘Unfair labor practice’ means the commission of an act designated an unfair labor practice
21 in ORS 243.672.

22 “(25) ‘Voluntary arbitration’ means the procedure whereby parties involved in a labor dispute
23 mutually agree to submit their differences to a third party for a final and binding decision.”.

24 After line 32, insert:

25 “**SECTION 6a.** If Senate Bill 400 becomes law, section 6 of this 2007 Act is amended to read:

26 “**Sec. 6.** The amendments to ORS 243.650, 653.077 and 653.256 by sections 1, **2 and 3a** [to 3] of
27 this 2007 Act apply to conduct occurring on or after the effective date of this 2007 Act.”.

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