

**HOUSE AMENDMENTS TO
B-ENGROSSED SENATE BILL 400
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

By COMMITTEE ON BUSINESS AND LABOR

May 2

1 On page 1 of the printed B-engrossed bill, line 2, delete “and”.

2 In line 3, before the period insert “; and repealing sections 3a and 6a, chapter _____, Oregon
3 Laws 2007 (Enrolled House Bill 2372)”.

4 On page 2, delete lines 24 and 25 and insert:

5 “(f) For employee bargaining involving employees covered by ORS 243.736, ‘employment re-
6 lations’ includes safety issues that have an impact on the on-the-job safety of the employees or
7 staffing levels that have a significant impact on the on-the-job safety of the employees.”.

8 On page 4, after line 23, insert:

9 **“SECTION 1a. If House Bill 2372 becomes law, sections 3a (amending ORS 243.650) and
10 6a, chapter _____, Oregon Laws 2007 (Enrolled House Bill 2372), and section 1 of this 2007
11 Act (amending ORS 243.650) are repealed and ORS 243.650, as amended by section 3, chapter
12 _____, Oregon Laws 2007 (Enrolled House Bill 2372), 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 may not include both academically licensed and unlicensed or
17 nonacademically licensed school employees. Academically licensed units may include but are not
18 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and
19 similar positions. This limitation does not apply to any bargaining unit certified or recognized prior
20 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[, so] **as** long as there

1 is mutual agreement of the parties to discuss these matters, which are permissive subjects of bar-
2 gaining.

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

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

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

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

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

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

18 “(e) For school district bargaining, ‘employment relations’ excludes class size, the school or ed-
19 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
20 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
21 gum chewing and similar matters of personal conduct, the standards and procedures for student
22 discipline, the time between student classes, the selection, agendas and decisions of 21st Century
23 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
24 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this
25 subsection.

26 “**(f) For employee bargaining involving employees covered by ORS 243.736, ‘employment**
27 **relations’ includes safety issues that have an impact on the on-the-job safety of the employ-**
28 **ees or staffing levels that have a significant impact on the on-the-job safety of the employ-**
29 **ees.**

30 “[*f*] **(g) For all other employee bargaining except school [*districts*] **district bargaining and****
31 **except as provided in paragraph (f) of this subsection,** ‘employment relations’ excludes staffing
32 levels and safety issues (except those staffing levels and safety issues [*which*] **that** have a direct and
33 substantial effect on the on-the-job safety of public employees), scheduling of services provided to
34 the public, determination of the minimum qualifications necessary for any position, criteria for
35 evaluation or performance appraisal, assignment of duties, workload when the effect on duties is
36 insubstantial, reasonable dress, grooming, and at-work personal conduct requirements respecting
37 smoking, gum chewing, and similar matters of personal conduct at work, and any other subject
38 proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

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

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

45 “(10) ‘Fair-share agreement’ means an agreement between the public employer and the recog-

1 nized or certified bargaining representative of public employees whereby employees who are not
2 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
3 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition
4 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
5 security agreement declaring they desire that *[such]* **the** agreement be rescinded, the board shall
6 take a secret ballot of the employees in *[such]* **the** unit and certify the results thereof to the re-
7 cognized or certified bargaining representative and to the public employer. Unless a majority of the
8 votes cast in an election favor *[such]* **the** union security agreement, the board shall certify deau-
9 thorization *[thereof]* **of the agreement**. A petition for deauthorization of a union security agreement
10 must be filed not more than 90 calendar days after the collective bargaining agreement is executed.
11 Only one such election may be conducted in any appropriate bargaining unit during the term of a
12 collective bargaining agreement between a public employer and the recognized or certified bar-
13 gaining representative.

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

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

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

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

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

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

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

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

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

44 “(20) ‘Public employer’ means the State of Oregon, and the following political subdivisions:
45 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-

1 politan service districts, public service corporations or municipal corporations and public and
2 quasi-public corporations.

3 “(21) ‘Public employer representative’ includes any individual or individuals specifically desig-
4 nated by the public employer to act in its interests in all matters dealing with employee represen-
5 tation, collective bargaining and related issues.

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

13 “(23) ‘Supervisory employee’ means any individual having authority in the interest of the em-
14 ployer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
15 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
16 commend such action, if in connection therewith, the exercise of [such] **the** authority is not of a
17 merely routine or clerical nature but requires the use of independent judgment. Failure to assert
18 supervisory status in any Employment Relations Board proceeding or in negotiations for any col-
19 lective bargaining agreement does not thereafter prevent assertion of supervisory status in any
20 subsequent board proceeding or contract negotiation. Notwithstanding the provisions of this sub-
21 section, a nurse, charge nurse or similar nursing position may not be deemed to be supervisory un-
22 less that position has traditionally been classified as supervisory.

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

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

27 After line 25, insert:

28 “**SECTION 2a.** If House Bill 2372 becomes law, section 2 of this 2007 Act is amended to read:

29 “**Sec. 2.** The amendments to ORS 243.650 by section [I] **1a** of this 2007 Act apply only to col-
30 lective bargaining agreements entered into on or after the effective date of this 2007 Act.”.

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