2009 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: HB 2633 **STATUS:** A-Engrossed
SUBJECT: Changes definition of "supervisory employee" for purposes of collective bargaining
GOVERNMENT UNIT AFFECTED: Department of Administrative Services – Human Resource Services Division, Employment Relations Board, Oregon State Police, Department of Corrections, Other State and Local Government Agencies
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DATE: May 28, 2009

	2009-2011	**2011-2013**
EXPENDITURES:		
See Analysis.	**Indeterminate**	**Indeterminate**

EFFECTIVE DATE: January 1, 2010

LOCAL GOVERNMENT MANDATE: This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

ANALYSIS: For certain employees, the measure changes the definition of "supervisory employee", which is one of three primary criteria used to determine which employees are excluded from collective bargaining. The change requires – for designation as supervisory – individuals to have the authority to "impose economic discipline". However, this criteria change only pertains to employees that are prohibited from striking under ORS 243.756. The bill relates to employees who are prohibited from striking which includes emergency telephone workers; employees of the Oregon Youth Authority who have custody, control or supervision of youth offenders; firefighters; guards at a correctional institution or mental hospital; parole and probation officers who supervise adult offenders; and police officers.

This change has an indeterminate fiscal impact on Oregon's public employers, which include state agencies, cities, counties, and special districts. State, city and county governments are concerned about how the bill's language will be legally interpreted and expenditures associated with the measure that cannot be quantified. Fiscal impact drivers and potential costs are outlined below.

The bill is silent on a statutory definition for "economic discipline" but is interpreted for purposes of this fiscal impact statement to mean actions that result in an economic loss for a supervised employee, such as a suspension without pay or a pay reduction.

The Department of Administrative Services reports that the bill will likely result in the addition of Sergeants to the Oregon State Police represented bargaining unit due to the fact that they may not meet the revised definition of supervisory employee due to a lack of economic sanction authority. However, the fiscal impact is indeterminate as the extent to which additional overtime costs will result is unknown. It is also unknown whether this measure will impact other positions in the agency.

Assuming the measure's effect is substantive, it will impact most public employers with employees in these non-striking positions. Employers will need to determine whether or not positions currently deemed supervisory continue to meet the revised definition and share those findings with the employee and collective bargaining unit. If the parties do not agree, a petition may be filed with ERB, which is responsible for resolving disputes over union representation. Fiscal impacts associated with these activities include the following:

1) Costs associated with reviewing job duties, position descriptions, and classification specifications. These will vary among employers based on the number of employees, diversity of classifications and/or occupations in the organization, and consistency in how supervisory status has been established.
2) Legal costs and staff time associated with petitions coming before ERB, which will depend on the volume and complexity of the petitions. The Board indicates it expects workload under this bill to be minimal and part of its normal course of business. However, the Legislative Fiscal Office (LFO) believes it is difficult to forecast the volume of potential hearing activity and would characterize ERB workload and fiscal impact as indeterminate.
3) Costs associated with overtime (employee becomes eligible for overtime) or lost productivity (employer can't afford overtime and employee used to work more than 40 hours per week). These may be incurred if a change in an employee's supervisory status correlates with a change in the employee's exemption status under the Fair Labor Standards Act.

Some positions not meeting the revised supervisory definition could continue to be excluded from collective bargaining based on other criteria, such as a confidential or managerial exclusion. The review of job duties may lead to the reassignment of work, modified spans of control, and increased use of leadwork. Depending on specific outcomes and magnitude, these changes could either increase or help mitigate costs associated with this measure.