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

MEASURE NUMBER: HB 2633 – Minority Report **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
PREPARED BY: Erica Kleiner, Laurie Byerly
REVIEWED BY: Laurie Byerly
DATE: April 21, 2009

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

EFFECTIVE DATE: January 1, 2010

GOVERNOR'S BUDGET: This bill is not anticipated by the Governor's recommended budget.

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: The measure makes two changes to the definition of "supervisory employee", which is one of three primary criteria used to determine which employees are excluded from collective bargaining. The first change clarifies, by adding the word "independent", the degree of authority that must be exercised by an individual in order for them to be considered supervisory under the law. The second change is specific to public safety officers and requires – for designation as supervisory – individuals in those occupations to have the authority to "impose economic discipline".

Both of these changes have an indeterminate fiscal impact on Oregon's public employers, which include state agencies, cities, counties, school districts, community colleges, public hospitals, and special districts. 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.

<u>Independent Authority</u>
The bill is silent on a definition for "independent authority" and it is unclear if "independent authority" is materially different from "independent judgment" that is already required under the current law. Absent some other action, an interpretation would likely evolve as petitions come before the Employment Relations Board (ERB) for its review and determination.

Assuming the measure's effect is substantive, it will impact most public employers. 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 to address whether or not independent authority is currently being exercised by a supervisor. 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.

<u>Economic Discipline</u>
The bill is also 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 requirement that a supervisor have the authority to impose these types of sanctions relates only to a member of the state police.

Due to the narrower scope for this portion of the bill, the Department of Administrative Services (DAS) calculated an estimated fiscal impact for Oregon State Police employees that would potentially be impacted by the bill. Employees classified as Sergeants or Lieutenants (currently supervisory) may not meet the revised definition of supervisory employee due to either a lack of independent or economic sanction authority. The fiscal impact estimate assumes these employees would enter existing bargaining units effective January 1, 2010, become overtime eligible, and work overtime hours equal to those currently being worked by non-supervisory employees.

Based on the assumptions noted above, estimated costs for 2009-11 would be approximately $2.2 million for overtime. The Legislative Fiscal Office considers this a high-end estimate, but concurs that additional overtime costs are a likely outcome of the measure, based on the agency's history of overtime usage and its public safety mission. In addition, prior to 1995, OSP Sergeants were part of the bargaining unit and eligible for overtime.