

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

MEASURE NUMBER: HB 2831 **STATUS:** A-Engrossed
SUBJECT: Collective bargaining process changes
GOVERNMENT UNIT AFFECTED: Department of Administrative Services – Human Resource Services Division/Labor Relations Unit, Employment Relations Board, state agencies, community colleges, cities, counties, and districts
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DATE: May 4, 2009

EXPENDITURES:	<u>2009-2011</u>	<u>2011-2013</u>
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: This measure makes several changes to the Public Employee Collective Bargaining Act (PECBA), which establishes a collective bargaining process for Oregon’s public employers and unions representing public employees. Employers covered by the PECBA include, among others, the State of Oregon, cities, counties, school districts, community colleges, public hospitals, and special districts. The PECBA is administered by the Employment Relations Board (ERB), a state agency.

The fiscal impact of this measure is indeterminate. There is no way to determine the extent to which future contract negotiations, arbitrations, or ERB decisions related to the bill’s changes will impact a public agency’s workload or budget. Fiscal impact drivers and potential costs are outlined below.

Appropriate Bargaining Unit

The measure identifies the categories of employees that are included in an “appropriate bargaining unit” for collective bargaining purposes. Temporary employees, seasonal employees, and limited duration employees are specifically called out. Election workers who are temporary, seasonal or limited duration employees are defined for the purpose of exclusion from “an appropriate bargaining unit” for collective bargaining purposes. To be included in an “appropriate bargaining unit”, these employees must perform substantially the same work as existing bargaining unit members. Limited duration and temporary employees are more narrowly defined for the purposes of inclusion in an “appropriate bargaining unit” for collective bargaining purposes.

In the past, ERB has denied petitions requesting representation for temporary employees based on more complex criteria than those noted above. If this bill results in ERB applying a narrower or less stringent standard, it is likely that more temporary employees will become represented. The fiscal impact associated with this outcome would vary for each individual public employer and depend primarily on the number of affected employees and bargaining agreement terms. Some public employers may see increased costs for employee salaries/benefits and spend more time on collective bargaining, including

responding to petitions brought before ERB. Other employers already operating under collective bargaining agreements which include temporary, seasonal, and limited duration employees could be minimally affected.

Managerial, Limited Duration and Temporary Employee Definition Modifications

This measure modifies the definition and use of “managerial employee”, which is used under PECBA to exclude employees from collective bargaining. Currently, to be considered a “managerial employee” an individual does not need to act in a supervisory capacity in relation to other employees. With this definition modification, an individual would be required to act in a supervisory capacity in relation to other employees and have the authority to hire, discipline, discharge or substantially impact the economic status of another employee to be considered a “managerial employee” and be excluded from collective bargaining. It is likely that employees that are now considered “managerial” and excluded from collective bargaining will require re-evaluation by their employer to determine whether they meet this narrower definition of “managerial”. It is also likely that more managerial employees will become represented because they don’t act in a supervisory capacity or have the authority to hire, discipline, discharge or substantially impact the economic status of another employee.

Limited duration and temporary employees are also more narrowly defined for the purposes of inclusion in an “appropriate bargaining unit”. Similar to the definition modification of a “managerial employee”, it is likely that employers will have to review the job duties of existing limited duration and temporary employees to determine if they are appropriately excluded from collective bargaining. Under the measure, to be considered a limited-duration employee for the purposes of inclusion in an “appropriate bargaining unit” an employee would need to be regularly scheduled on a full-time or part-time basis for an agreed-upon period and be employed under a grant or for special projects. Likewise, to be included in an “appropriate bargaining unit” temporary employees need to be employed for the purpose of meeting emergency, nonrecurring or short-term workforce needs.

Another change the bill makes is modifying PECBA to provide that the exercise of any function of authority that is currently outlined in the definition of a “supervisory employee” does not require the conclusion that the individual exercising the functions is a supervisory employee. The change may push agencies to reevaluate some, if not all, positions to confirm the validity of their supervisory designations.

As mentioned above, the result of the modifications of these definitions will likely be that public employers will be required to perform reviews of the job duties of these positions which may lead to the reassignment of work, modified spans of control, increased use of leadwork, and movement of positions into or out of the bargaining unit. Moving positions into the bargaining unit could result in increased costs for salaries or overtime, depending on wage differentials between union and non-union pay scales and contract language regarding overtime. It is also likely that a full understanding of how these changes impact positions and collective bargaining will develop only after related petitions come before the Employment Relations Board (ERB) for its review and determination. Costs associated with the activities and outcomes noted above are indeterminate.

University Faculty Representation Elections

The measure eliminates a process – for state university faculty only – requiring one collective bargaining election ballot to deal with both the choice (yes or no) to be represented and organization selection (if yes, then which organization). This change will make the university faculty process consistent with that of other bargaining units and reduce ERB’s workload for tabulating ballots. There is no fiscal impact associated with this part of the bill.

Strike Replacements

Finally, the measure allows public employers to hire a temporary replacement, but prohibits them from hiring a permanent replacement for any public employee that is engaged in a lawful strike. ERB reports no related case law has been tested or used to set a precedent for an employer to hire a permanent replacement. It is unclear how this provision might affect a union's inclination to go out on strike or the ability of public employers to manage during a strike.

Fiscal Impact Summary

Both state agencies and local governments have expressed concern that this bill will require additional work and result in an indeterminate fiscal impact. DAS, in particular, as the collective bargaining lead for state agencies, indicates the agency will need two new positions and approximately \$500,000 Other Funds to handle an expected increase in labor relations workload. The Legislative Fiscal Office (LFO) concurs there will likely be costs associated with this measure, but believes there are too many variables associated with the bill to support anything other than an indeterminate fiscal impact.

Legal costs and staff time associated with petitions coming before ERB are also very likely; these 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, LFO believes it is difficult to forecast the volume of potential hearing activity and would characterize ERB workload and fiscal impact as indeterminate.