

HOUSE AMENDMENTS TO HOUSE BILL 2831

By COMMITTEE ON BUSINESS AND LABOR

May 4

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest of the line and line 3 and
2 insert “and amending ORS 243.650, 243.686, 410.614, 443.733 and 657A.430.”

3 Delete lines 5 through 28 and delete pages 2 and 3 and insert:

4 “**SECTION 1.** ORS 243.650 is amended to read:

5 “243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

6 “(1) ‘Appropriate bargaining unit’ means the unit designated by the Employment Relations Board
7 or voluntarily recognized by the public employer to be appropriate for collective bargaining. ‘**Ap-**
8 **propriate bargaining unit**’ includes, but is not limited to, temporary employees, seasonal
9 employees and limited duration employees who, for more than three months in a 12-month
10 period unless otherwise agreed to in a collective bargaining agreement, perform work that
11 is substantially the same work that other employees in the bargaining unit perform. However,
12 an appropriate bargaining unit may not include **election workers** or both academically licensed and
13 unlicensed or nonacademically licensed school employees. Academically licensed units may include
14 but are not limited to teachers, nurses, counselors, therapists, psychologists, child development
15 specialists and similar positions. This limitation does not apply to any bargaining unit certified or
16 recognized prior to June 6, 1995, or to any school district with fewer than 50 employees.

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

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

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

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

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

1 gaining.

2 “(7) **‘Election worker’ means a temporary, seasonal or limited duration employee who**
3 **works for an official election office during a regular election cycle.**

4 “[7)(a)] **(8)(a)** ‘Employment relations’ includes, but is not limited to, matters concerning direct
5 or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other condi-
6 tions of employment.

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

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

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

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

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

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

34 “[8)] **(9)** ‘Exclusive representative’ means the labor organization that, as a result of certification
35 by the board or recognition by the employer, has the right to be the collective bargaining agent of
36 all employees in an appropriate bargaining unit.

37 “[9)] **(10)** ‘Fact-finding’ means identification of the major issues in a particular labor dispute by
38 one or more impartial individuals who review the positions of the parties, resolve factual differences
39 and make recommendations for settlement of the dispute.

40 “[10)] **(11)** ‘Fair-share agreement’ means an agreement between the public employer and the
41 recognized or certified bargaining representative of public employees whereby employees who are
42 not members of the employee organization are required to make an in-lieu-of-dues payment to an
43 employee organization except as provided in ORS 243.666. Upon the filing with the board of a peti-
44 tion by 30 percent or more of the employees in an appropriate bargaining unit covered by such un-
45 ion security agreement declaring they desire that the agreement be rescinded, the board shall take

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

8 “[11] (12) ‘Final offer’ means the proposed contract language and cost summary submitted to
9 the mediator within seven days of the declaration of impasse.

10 “[12] (13) ‘Labor dispute’ means any controversy concerning employment relations or con-
11 cerning the association or representation of persons in negotiating, fixing, maintaining, changing,
12 or seeking to arrange terms or conditions of employment relations, regardless of whether the
13 disputants stand in the proximate relation of employer and employee.

14 “[13] (14) ‘Labor organization’ means any organization that has as one of its purposes repre-
15 senting employees in their employment relations with public employers.

16 “[14] (15) ‘Last best offer package’ means the offer exchanged by parties not less than 14 days
17 prior to the date scheduled for an interest arbitration hearing.

18 “[15] (16) ‘Legislative body’ means the Legislative Assembly, the city council, the county
19 commission and any other board or commission empowered to levy taxes.

20 “(17) **‘Limited duration employee’ means an employee who is regularly scheduled on a**
21 **full-time or part-time basis for an agreed-upon period and who is employed under a grant or**
22 **for special projects.**

23 “[16] (18) ‘Managerial employee’ means an employee of the State of Oregon who possesses au-
24 thority to formulate and carry out management decisions or who represents management’s interest
25 by taking or effectively recommending discretionary actions that control or implement employer
26 policy, and who has discretion in the performance of these management responsibilities beyond the
27 routine discharge of duties. [A ‘managerial employee’ need not act in a supervisory capacity in relation
28 to other employees.] **A ‘managerial employee’ acts in a supervisory capacity in relation to other**
29 **employees and has the authority to hire, discipline, discharge or substantially impact the**
30 **economic status of an employee.** Notwithstanding this subsection, ‘managerial employee’ does not
31 include faculty members at a community college, college or university.

32 “[17] (19) ‘Mediation’ means assistance by an impartial third party in reconciling a labor dis-
33 pute between the public employer and the exclusive representative regarding employment relations.

34 “[18] (20) ‘Payment-in-lieu-of-dues’ means an assessment to defray the cost for services by the
35 exclusive representative in negotiations and contract administration of all persons in an appropriate
36 bargaining unit who are not members of the organization serving as exclusive representative of the
37 employees. The payment must be equivalent to regular union dues and assessments, if any, or must
38 be an amount agreed upon by the public employer and the exclusive representative of the employees.

39 “[19] (21) ‘Public employee’ means an employee of a public employer but does not include
40 elected officials, persons appointed to serve on boards or commissions, incarcerated persons working
41 under section 41, Article I of the Oregon Constitution, or persons who are confidential employees,
42 supervisory employees or managerial employees.

43 “[20] (22) ‘Public employer’ means the State of Oregon, and the following political subdivisions:
44 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
45 politan service districts, public service corporations or municipal corporations and public and

1 quasi-public corporations.

2 “[(21)] (23) ‘Public employer representative’ includes any individual or individuals specifically
3 designated by the public employer to act in its interests in all matters dealing with employee rep-
4 resentation, collective bargaining and related issues.

5 “[(22)] (24) ‘Strike’ means a public employee’s refusal in concerted action with others to report
6 for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or
7 his or her absence in whole or in part from the full, faithful or proper performance of his or her
8 duties of employment, for the purpose of inducing, influencing or coercing a change in the condi-
9 tions, compensation, rights, privileges or obligations of public employment; however, nothing shall
10 limit or impair the right of any public employee to lawfully express or communicate a complaint or
11 opinion on any matter related to the conditions of employment.

12 “[(23)] (25) ‘Supervisory employee’ means any individual having authority in the interest of the
13 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
14 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
15 commend such action, if in connection therewith, the exercise of the authority is not of a merely
16 routine or clerical nature but requires the use of independent judgment. [*Failure to assert supervi-
17 sory status in any Employment Relations Board proceeding or in negotiations for any collective bar-
18 gaining agreement does not thereafter prevent assertion of supervisory status in any subsequent board
19 proceeding or contract negotiation.*] **The exercise of any function of authority enumerated in this
20 subsection does not require the conclusion that the individual exercising the function is a
21 supervisory employee.** Notwithstanding the provisions of this subsection, a nurse, charge nurse or
22 similar nursing position may not be deemed to be supervisory unless that position has traditionally
23 been classified as supervisory.

24 “(26) ‘Temporary employee’ means an employee employed for the purpose of meeting
25 emergency, nonrecurring or short-term workforce needs.

26 “[(24)] (27) ‘Unfair labor practice’ means the commission of an act designated an unfair labor
27 practice in ORS 243.672.

28 “[(25)] (28) ‘Voluntary arbitration’ means the procedure whereby parties involved in a labor
29 dispute mutually agree to submit their differences to a third party for a final and binding
30 decision.”.

31 On page 4, delete lines 1 through 31.

32 In line 33, delete “(18) and (19)” and insert “(21) and (22)”.

33 On page 5, line 9, delete “(18)” and insert “(21)”.

34 In line 42, delete “(18)” and insert “(21)”.

35 On page 7, delete lines 4 through 45.

36 On page 8, delete lines 1 through 21.

37 In line 22, delete “10” and insert “6” and delete “11” and insert “7”.

38 In line 24, delete “11” and insert “7”.