

## SENATE AMENDMENTS TO SENATE BILL 257

By COMMITTEE ON JUDICIARY

May 11

1 In line 2 of the printed bill, after the semicolon delete the rest of the line and insert “creating  
2 new provisions; amending ORS 243.650; and declaring an emergency.”.

3 Delete lines 4 through 21 and insert:

4 **“SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS 181.610 to**  
5 **181.712.**

6 **“SECTION 2. Notwithstanding any contrary provision of ORS 181.610 to 181.712:**

7 **“(1) The Department of Corrections shall provide training for basic certification of cor-**  
8 **rections officers employed by the Department of Corrections.**

9 **“(2) The Department of Corrections shall develop proposed training standards for the**  
10 **basic certification of corrections officers employed by the Department of Corrections and**  
11 **provide the proposed standards to the Corrections Policy Committee. After reviewing the**  
12 **proposed standards provided by the Department of Corrections, the Corrections Policy**  
13 **Committee shall recommend, and the Board on Public Safety Standards and Training shall**  
14 **adopt by rule, minimum training standards for basic certification of corrections officers**  
15 **employed by the Department of Corrections.**

16 **“(3) The Department of Public Safety Standards and Training shall conduct periodic au-**  
17 **ditions of the training provided by the Department of Corrections to ensure compliance with the**  
18 **standards adopted under subsection (2) of this section. If the Department of Public Safety**  
19 **Standards and Training finds that the training complies with the standards, the department**  
20 **shall accredit the training for the same term and upon the same conditions as training pro-**  
21 **grams for correctional officers that are employed by a law enforcement unit other than the**  
22 **Department of Corrections. Training provided in accordance with this section constitutes**  
23 **training necessary for certification under ORS 181.610 to 181.712.**

24 **“SECTION 3. ORS 243.650 is amended to read:**

25 **“243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:**

26 **“(1) ‘Appropriate bargaining unit’ means the unit designated by the Employment Relations Board**  
27 **or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-**  
28 **ever, an appropriate bargaining unit may not include both academically licensed and unlicensed or**  
29 **nonacademically licensed school employees. Academically licensed units may include but are not**  
30 **limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and**  
31 **similar positions. This limitation does not apply to any bargaining unit certified or recognized prior**  
32 **to June 6, 1995, or to any school district with fewer than 50 employees.**

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

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

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

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

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

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

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

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

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

28           “(e) For school district bargaining, ‘employment relations’ excludes class size, the school or ed-  
29 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-  
30 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,  
31 gum chewing and similar matters of personal conduct, the standards and procedures for student  
32 discipline, the time between student classes, the selection, agendas and decisions of 21st Century  
33 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS  
34 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this  
35 subsection.

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

39           “(g) For all other employee bargaining except school district bargaining and except as provided  
40 in paragraph (f) of this subsection, ‘employment relations’ excludes staffing levels and safety issues  
41 (except those staffing levels and safety issues that have a direct and substantial effect on the on-  
42 the-job safety of public employees), scheduling of services provided to the public, determination of  
43 the minimum qualifications necessary for any position, criteria for evaluation or performance ap-  
44 praisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress,  
45 grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar

1 matters of personal conduct at work, and any other subject proposed that is permissive under par-  
2 agraphs (b), (c) and (d) of this subsection.

3 **“(h) For employee bargaining involving employees of the Department of Corrections,**  
4 **‘employment relations’ excludes employee training, training standards and training curric-**  
5 **ulum, developed by or on behalf of the department.**

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

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

12 “(10) ‘Fair-share agreement’ means an agreement between the public employer and the recog-  
13 nized or certified bargaining representative of public employees whereby employees who are not  
14 members of the employee organization are required to make an in-lieu-of-dues payment to an em-  
15 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition  
16 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union  
17 security agreement declaring they desire that the agreement be rescinded, the board shall take a  
18 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-  
19 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an  
20 election favor the union security agreement, the board shall certify deauthorization of the agree-  
21 ment. A petition for deauthorization of a union security agreement must be filed not more than 90  
22 calendar days after the collective bargaining agreement is executed. Only one such election may be  
23 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement  
24 between a public employer and the recognized or certified bargaining representative.

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

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

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

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

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

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

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

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

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

10 “(20) ‘Public employer’ means the State of Oregon, and the following political subdivisions:  
11 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-  
12 politan service districts, public service corporations or municipal corporations and public and  
13 quasi-public corporations.

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

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

24 “(23) ‘Supervisory employee’ means any individual having authority in the interest of the em-  
25 ployer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline  
26 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-  
27 commend such action, if in connection therewith, the exercise of the authority is not of a merely  
28 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-  
29 sory status in any Employment Relations Board proceeding or in negotiations for any collective  
30 bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent  
31 board proceeding or contract negotiation. Notwithstanding the provisions of this subsection, a nurse,  
32 charge nurse or similar nursing position may not be deemed to be supervisory unless that position  
33 has traditionally been classified as supervisory.

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

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

38 “**SECTION 4. Section 2 of this 2009 Act applies to corrections officers hired by the De-**  
39 **partment of Corrections on or after the effective date of this 2009 Act.**

40 “**SECTION 5. This 2009 Act being necessary for the immediate preservation of the public**  
41 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
42 **July 1, 2009.”**