

# House Bill 3061

Sponsored by Representative THOMPSON (at the request of Mike Nearman)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Employment Relations Board to conduct annual recertification elections for appropriate bargaining units.

## A BILL FOR AN ACT

1  
2 Relating to appropriate bargaining unit recertification; creating new provisions; and amending ORS  
3 243.650.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS chapter 243.650**  
6 **to 243.782.**

7 **SECTION 2. (1) The Employment Relations Board shall conduct an annual recertification**  
8 **election for each appropriate bargaining unit that collectively bargains with the State of**  
9 **Oregon, beginning in the first year after an appropriate bargaining unit receives certification**  
10 **pursuant to ORS 243.682 (2) or (3).**

11 **(2) All members of an appropriate bargaining unit required to pay dues to the appropriate**  
12 **bargaining unit are entitled to vote in the recertification election.**

13 **(3) The recertification election must be conducted by secret ballot.**

14 **(4) The board may void the results of the recertification election if the board determines**  
15 **the election did not conform to subsections (1) to (3) of this section. The board shall then**  
16 **conduct a new recertification election for the appropriate bargaining unit.**

17 **(5) The board shall revoke the certification of an appropriate bargaining unit if a majority**  
18 **of the members of the appropriate bargaining unit do not vote for recertification.**

19 **(6) Any voting member of an appropriate bargaining unit may file a complaint with the**  
20 **board to enforce compliance with this section.**

21 **SECTION 3. ORS 243.650 is amended to read:**

22 243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

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

30 (2) "Board" means the Employment Relations Board.

31 (3) "Certification" means official recognition by the board that a labor organization is the ex-

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 clusive representative for all of the employees in the appropriate bargaining unit.

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

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

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

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

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

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

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

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

37 (f) For employee bargaining involving employees covered by ORS 243.736, "employment  
38 relations" includes safety issues that have an impact on the on-the-job safety of the employees or  
39 staffing levels that have a significant impact on the on-the-job safety of the employees.

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

1 grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar  
 2 matters of personal conduct at work, and any other subject proposed that is permissive under par-  
 3 agraphs (b), (c) and (d) of this subsection.

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

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

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

23 (11) “Final offer” means the proposed contract language and cost summary submitted to the  
 24 mediator within seven days of the declaration of impasse.

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

29 (13) “Labor organization” means any organization that has as one of its purposes representing  
 30 employees in their employment relations with public employers.

31 (14) “Last best offer package” means the offer exchanged by parties not less than 14 days prior  
 32 to the date scheduled for an interest arbitration hearing.

33 (15) “Legislative body” means the Legislative Assembly, the city council, the county commission  
 34 and any other board or commission empowered to levy taxes.

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

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

44 (18) “Payment-in-lieu-of-dues” means an assessment to defray the cost for services by the exclu-  
 45 sive representative in negotiations and contract administration of all persons in an appropriate

1 bargaining unit who are not members of the organization serving as exclusive representative of the  
 2 employees. The payment must be equivalent to regular union dues and assessments, if any, or must  
 3 be an amount agreed upon by the public employer and the exclusive representative of the employees.

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

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

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

15 **(22) "Recertification" means the renewal of the certification for an appropriate bargain-**  
 16 **ing unit through an election pursuant to section 2 (1) to (4) of this 2013 Act.**

17 [(22)] (23) "Strike" means a public employee's refusal in concerted action with others to report  
 18 for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or  
 19 his or her absence in whole or in part from the full, faithful or proper performance of his or her  
 20 duties of employment, for the purpose of inducing, influencing or coercing a change in the condi-  
 21 tions, compensation, rights, privileges or obligations of public employment; however, nothing shall  
 22 limit 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)] (24) "Supervisory employee" means any individual having authority in the interest of the  
 25 employer 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  
 32 nurse, charge nurse or similar nursing position may not be deemed to be supervisory unless that  
 33 position has traditionally been classified as supervisory.

34 [(24)] (25) "Unfair labor practice" means the commission of an act designated an unfair labor  
 35 practice in ORS 243.672.

36 [(25)] (26) "Voluntary arbitration" means the procedure whereby parties involved in a labor  
 37 dispute mutually agree to submit their differences to a third party for a final and binding decision.

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