

A-Engrossed
House Bill 3342

Ordered by the Senate July 5
Including Senate Amendments dated July 5

Sponsored by Representative DEMBROW; Representatives BARKER, MATTHEWS, Senator ROBLAN

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.

Prohibits public employer from assisting, promoting or deterring union organizing [*and from using public property to hold meeting with employee or supervisor if purpose of meeting is to assist, promote or deter union organizing*]. Prohibits public employer from discharging, demoting, harassing or otherwise taking adverse action against individual because individual seeks to enforce Act or testifies, assists or participates in investigation, hearing or other proceeding to enforce Act. Provides exceptions. Requires [*Bureau of Labor and Industries*] **Employment Relations Board** to enforce Act. [*Allows civil action for violation.*] Imposes civil penalty for violation.

Requires Employment Relations Board to include in existing bargaining unit public employees who are not members of unit, but who seek to be included in unit, if majority of employees seeking inclusion sign petition submitted to board requesting inclusion.

Declares emergency, effective July 1, 2013.

A BILL FOR AN ACT

1
2 Relating to union organizing; creating new provisions; amending ORS 243.672, 243.676 and 243.682;
3 and declaring an emergency.

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

5 **SECTION 1. Sections 3 and 4 of this 2013 Act may be cited as the Public Employer Ac-**
6 **countability Act.**

7 **SECTION 2. Section 4 of this 2013 Act is added to and made a part of ORS 243.650 to**
8 **243.782.**

9 **SECTION 3. (1) The Legislative Assembly finds that:**

10 (a) **It is the policy of this state that public funds may not be used to subsidize interfer-**
11 **ence with an employee's choice to join or to be represented by a labor union.**

12 (b) **Some public employers use public funds to aid or subsidize efforts to deter union or-**
13 **ganizing.**

14 (c) **Use of public funds to deter union organizing is contrary to the purposes for which**
15 **the funds were appropriated and is wasteful of scarce public resources.**

16 (2) **The purpose of section 4 of this 2013 Act is to maintain the neutrality of public bodies**
17 **in labor organizing by forbidding the use of public funds for unintended purposes and to**
18 **conserve public resources by ensuring that public funds are used as intended.**

19 **SECTION 4. (1) As used in this section:**

20 (a) **"Assist, promote or deter union organizing" means any attempt by a public employer**
21 **to influence the decision of any or all of its employees or the employees of its subcontractors**
22 **regarding:**

23 (A) **Whether to support or oppose a labor organization that represents or seeks to rep-**

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 resent those employees; or

2 (B) Whether to become a member of any labor organization.

3 (b) "Public funds" means moneys drawn from the State Treasury or any special or trust
4 fund of the state government, including any moneys appropriated by the state government
5 and transferred to any public body, as defined in ORS 174.109, and any other moneys under
6 the control of a public official by virtue of office.

7 (c) "Public property" means any real property or facility owned or leased by a public
8 employer.

9 (2) A public employer may not:

10 (a) Use public funds to support actions to assist, promote or deter union organizing; or

11 (b) Discharge, demote, harass or otherwise take adverse action against any individual
12 because the individual seeks to enforce this section or testifies, assists or participates in any
13 manner in an investigation, hearing or other proceeding to enforce this section.

14 (3) If an employee requests the opinion of the employee's employer or supervisor about
15 union organizing, nothing in this section prohibits the employer or supervisor from re-
16 sponding to the request of the employee.

17 (4) This section does not apply to an activity performed, or to an expense incurred, in
18 connection with:

19 (a) Addressing a grievance or negotiating or administering a collective bargaining agree-
20 ment.

21 (b) Allowing a labor organization or its representatives access to the public employer's
22 facilities or property.

23 (c) Performing an activity required by federal or state law or by a collective bargaining
24 agreement.

25 (d) Negotiating, entering into or carrying out an agreement with a labor organization.

26 (e) Paying wages to a represented employee while the employee is performing duties if
27 the payment is permitted under a collective bargaining agreement.

28 (5)(a) This section shall be enforced by the Employment Relations Board, which shall
29 adopt rules necessary to implement and administer compliance. A resident of this state may
30 intervene as a plaintiff in any action brought under this section.

31 (b) Nothing in this section prohibits a public employer from spending public funds for the
32 purpose of representing the public employer in a proceeding before the board or in a judicial
33 review of that proceeding.

34 **SECTION 5.** A petition for representation filed under ORS 243.682 (2) alleging that a
35 majority of employees in the unit appropriate for the purpose of collective bargaining wish
36 to be represented by a labor organization for that purpose must include a statement of a
37 desire by the employees to be represented for the purpose of collective bargaining and must
38 be signed and dated by 30 percent of the employees in the unit during the 180 days prior to
39 the filing of the petition with the Employment Relations Board.

40 **SECTION 6.** ORS 243.672 is amended to read:

41 243.672. (1) It is an unfair labor practice for a public employer or its designated representative
42 to do any of the following:

43 (a) Interfere with, restrain or coerce employees in or because of the exercise of rights guaran-
44 teed in ORS 243.662.

45 (b) Dominate, interfere with or assist in the formation, existence or administration of any em-

1 ployee organization.

2 (c) Discriminate in regard to hiring, tenure or any terms or condition of employment for the
3 purpose of encouraging or discouraging membership in an employee organization. Nothing in this
4 section is intended to prohibit the entering into of a fair-share agreement between a public employer
5 and the exclusive bargaining representative of its employees. If a "fair-share" agreement has been
6 agreed to by the public employer and exclusive representative, nothing prohibits the deduction of
7 the payment-in-lieu-of-dues from the salaries or wages of the employees.

8 (d) Discharge or otherwise discriminate against an employee because the employee has signed
9 or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650
10 to 243.782.

11 (e) Refuse to bargain collectively in good faith with the exclusive representative.

12 (f) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

13 (g) Violate the provisions of any written contract with respect to employment relations including
14 an agreement to arbitrate or to accept the terms of an arbitration award, where previously the
15 parties have agreed to accept arbitration awards as final and binding upon them.

16 (h) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and
17 sign the resulting contract.

18 **(i) Violate section 4 (2) of this 2013 Act.**

19 (2) Subject to the limitations set forth in this subsection, it is an unfair labor practice for a
20 public employee or for a labor organization or its designated representative to do any of the fol-
21 lowing:

22 (a) Interfere with, restrain or coerce any employee in or because of the exercise of any right
23 guaranteed under ORS 243.650 to 243.782.

24 (b) Refuse to bargain collectively in good faith with the public employer if the labor organization
25 is an exclusive representative.

26 (c) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

27 (d) Violate the provisions of any written contract with respect to employment relations, includ-
28 ing an agreement to arbitrate or to accept the terms of an arbitration award, where previously the
29 parties have agreed to accept arbitration awards as final and binding upon them.

30 (e) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and
31 sign the resulting contract.

32 (f) For any labor organization to engage in unconventional strike activity not protected for pri-
33 vate sector employees under the National Labor Relations Act on June 6, 1995. This provision ap-
34 plies to sitdown, slowdown, rolling, intermittent or on-and-off again strikes.

35 (g) For a labor organization or its agents to picket or cause, induce, or encourage to be
36 picketed, or threaten to engage in such activity, at the residence or business premises of any indi-
37 vidual who is a member of the governing body of a public employer, with respect to a dispute over
38 a collective bargaining agreement or negotiations over employment relations, if an objective or ef-
39 fect of such picketing is to induce another person to cease doing business with the governing body
40 member's business or to cease handling, transporting or dealing in goods or services produced at the
41 governing body's business. For purposes of this paragraph, a member of the Legislative Assembly is
42 a member of the governing body of a public employer when the collective bargaining negotiation or
43 dispute is between the State of Oregon and a labor organization. The Governor and other statewide
44 elected officials are not considered members of a governing body for purposes of this paragraph.
45 Nothing in this paragraph may be interpreted or applied in a manner that violates the right of free

1 speech and assembly as protected by the Constitution of the United States or the Constitution of the
2 State of Oregon.

3 (3) An injured party may file a written complaint with the Employment Relations Board not
4 later than 180 days following the occurrence of an unfair labor practice. For each unfair labor
5 practice complaint filed, a fee of \$300 is imposed. For each answer to an unfair labor practice
6 complaint filed with the board, a fee of \$300 is imposed. The board may allow any other person to
7 intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee
8 of \$300 to the board. The board may, in its discretion, order fee reimbursement to the prevailing
9 party in any case in which the complaint or answer is found to have been frivolous or filed in bad
10 faith. The board shall deposit fees received under this section to the credit of the Employment Re-
11 lations Board Administrative Account.

12 **SECTION 7.** ORS 243.676 is amended to read:

13 243.676. (1) Whenever a written complaint is filed alleging that any person has engaged in or is
14 engaging in any unfair labor practice listed in ORS 243.672 (1) and (2) and 243.752, the Employment
15 Relations Board or its agent shall:

16 (a) Cause to be served upon such person a copy of the complaint;

17 (b) Investigate the complaint to determine if a hearing on the unfair labor practice charge is
18 warranted. If the investigation reveals that no issue of fact or law exists, the board may dismiss the
19 complaint; and

20 (c) Set the matter for hearing if the board finds in its investigation made pursuant to paragraph
21 (b) of this subsection that an issue of fact or law exists. The hearing shall be before the board or
22 an agent of the board not more than 20 days after a copy of the complaint has been served on the
23 person.

24 (2) Where, as a result of the hearing required pursuant to subsection (1)(c) of this section, the
25 board finds that any person named in the complaint has engaged in or is engaging in any unfair
26 labor practice charged in the complaint, the board shall:

27 (a) State its findings of fact;

28 (b) Issue and cause to be served on such person an order that the person cease and desist from
29 the unfair labor practice;

30 (c) Take such affirmative action, including but not limited to the reinstatement of employees
31 with or without back pay, as necessary to effectuate the purposes of ORS 240.060, 240.065, 240.080,
32 240.123, 243.650 to 243.782, 292.055 and 341.290;

33 (d) Designate the amount and award representation costs, if any, to the prevailing party; and

34 (e) Designate the amount and award attorney fees, if any, to the prevailing party on appeal, in-
35 cluding proceedings for Supreme Court review, of a board order.

36 (3) Where the board finds that the person named in the complaint has not engaged in or is not
37 engaging in an unfair labor practice, the board shall:

38 (a) Issue an order dismissing the complaint; and

39 (b) Designate the amount and award representation costs, if any, to the prevailing party.

40 (4)(a) The board may award a civil penalty to any person as a result of an unfair labor practice
41 complaint hearing, in the aggregate amount of up to \$1,000 per case, without regard to attorney fees,
42 if:

43 [(a)] (A) The complaint has been affirmed pursuant to subsection (2) of this section and the
44 board finds that the person who has committed, or who is engaging, in an unfair labor practice has
45 done so repetitively, knowing that the action taken was an unfair labor practice and took the action

1 disregarding this knowledge, or that the action constituting the unfair labor practice was egregious;
2 or

3 [(b)] (B) The complaint has been dismissed pursuant to subsection (3) of this section, and that
4 the complaint was frivolously filed, or filed with the intent to harass the other person, or both.

5 (b) **Notwithstanding paragraph (a) of this subsection, if the board finds that a public**
6 **employer named in the complaint violated section 4 (2) of this 2013 Act, the board shall im-**
7 **pose a civil penalty equal to triple the amount of funds the public employer expended to as-**
8 **ist, promote or deter union organizing.**

9 (5) As used in subsections (1) to (4) of this section, "person" includes but is not limited to indi-
10 viduals, labor organizations, associations and public employers.

11 **SECTION 8.** ORS 243.682 is amended to read:

12 243.682. (1) If a question of representation exists, the Employment Relations Board shall:

13 (a) Upon application of a public employer, public employee or a labor organization, designate the
14 appropriate bargaining unit, and in making its determination shall consider such factors as commu-
15 nity of interest, wages, hours and other working conditions of the employees involved, the history
16 of collective bargaining, and the desires of the employees. The board may determine a unit to be the
17 appropriate unit in a particular case even though some other unit might also be appropriate.

18 (b) Investigate and conduct a hearing on a petition that has been filed by:

19 (A) A labor organization alleging that 30 percent of the employees in an appropriate bargaining
20 unit desire to be represented for collective bargaining by an exclusive representative;

21 (B) A labor organization alleging that 30 percent of the employees in an appropriate bargaining
22 unit assert that the designated exclusive representative is no longer the representative of the ma-
23 jority of the employees in the unit;

24 (C) A public employer alleging that one or more labor organizations has presented a claim to
25 the public employer requesting recognition as the exclusive representative in an appropriate bar-
26 gaining unit; or

27 (D) An employee or group of employees alleging that 30 percent of the employees assert that the
28 designated exclusive representative is no longer the representative of the majority of employees in
29 the unit.

30 (2)(a) Notwithstanding subsection (1) of this section, when an employee, group of employees or
31 labor organization acting on behalf of the employees files a petition alleging that a majority of em-
32 ployees in a unit appropriate for the purpose of collective bargaining wish to be represented by a
33 labor organization for that purpose, **or when a group of unrepresented employees files a petition**
34 **stating that the unrepresented employees seek to be included in an existing bargaining unit,**
35 the board shall investigate the petition. If the board finds that a majority of the employees in a unit
36 appropriate for bargaining **or in a group of unrepresented employees seeking to be included in**
37 **an existing bargaining unit** have signed authorizations designating the labor organization specified
38 in the petition as the employees' bargaining representative and that no other labor organization is
39 currently certified or recognized as the exclusive representative of any of the employees in the unit
40 **or in the group of unrepresented employees seeking to be included in an existing bargaining**
41 **unit,** the board may not conduct an election but shall certify the labor organization as the exclusive
42 representative unless a petition for a representation election is filed as provided in subsection (3)
43 of this section.

44 (b) The board by rule shall develop guidelines and procedures for the designation by employees
45 of a bargaining representative in the manner described in paragraph (a) of this subsection. The

1 guidelines and procedures must include:

2 (A) Model collective bargaining authorization language that may be used for purposes of making
3 the designations described in paragraph (a) of this subsection;

4 (B) Procedures to be used by the board to establish the authenticity of signed authorizations
5 designating bargaining representatives;

6 (C) Procedures to be used by the board to notify affected employees of the filing of a petition
7 requesting certification under subsection (3) of this section;

8 (D) Procedures for filing a petition to request a representation election, including a timeline of
9 not more than 14 days after notice has been delivered to the affected employees of a petition filed
10 under paragraph (a) of this subsection; and

11 (E) Procedures for expedited resolution of any dispute about the scope of the appropriate bar-
12 gaining unit. The resolution of the dispute may occur after an election is conducted.

13 (c) Solicitation and rescission of a signed authorization designating bargaining representatives
14 are subject to the provisions of ORS 243.672.

15 (3)(a) Notwithstanding subsection (2) of this section, when a petition requesting certification has
16 been filed under subsection (2) of this section, an employee or a group of employees in the unit
17 designated by the petition, **or one or more of the unrepresented employees seeking to be in-**
18 **cluded in an existing bargaining unit**, may file a petition with the board to request that a repre-
19 sentation election be conducted.

20 (b) The petition requesting a representation election must be supported by at least 30 percent
21 of the employees in the bargaining unit designated by the petition, **or 30 percent of the unrepre-**
22 **sented employees seeking to be included in an existing bargaining unit.**

23 (c) The representation election shall be conducted on-site or by mail not later than 45 days after
24 the date on which the petition was filed.

25 (4) Except as provided in ORS 243.692, if the board finds in a hearing conducted pursuant to
26 subsection (1)(b) of this section that a question of representation exists, the board shall conduct an
27 election by secret ballot, at a time and place convenient for the employees of the jurisdiction and
28 also within a reasonable period of time after the filing has taken place, and certify the results of the
29 election.

30 **SECTION 9. The amendments to ORS 243.682 by section 8 of this 2013 Act apply to pe-**
31 **titions filed with the Employment Relations Board on or after the effective date of this 2013**
32 **Act.**

33 **SECTION 10. This 2013 Act being necessary for the immediate preservation of the public**
34 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
35 **July 1, 2013.**

36