

# House Bill 3342

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 **as introduced**.

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 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 243.682; and declaring an  
3 emergency.

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

5 **SECTION 1. Sections 2 and 3 of this 2013 Act may be cited as the Public Employer Ac-**  
6 **countability Act.**

7 **SECTION 2. (1) The Legislative Assembly finds that:**

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

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

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

14 (2) **The purpose of section 3 of this 2013 Act is to maintain the neutrality of public bodies**  
15 **in labor organizing by forbidding the use of public funds for unintended purposes and to**  
16 **conserve public resources by ensuring that public funds are used as intended.**

17 **SECTION 3. (1) As used in this section:**

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

21 (A) **Whether to support or oppose a labor organization that represents or seeks to rep-**  
22 **resent those employees; or**

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

24 (b) **"Public employer" means the State of Oregon, cities, counties, community colleges,**  
25 **school districts, special districts, mass transit districts, metropolitan service districts, public**  
26 **service corporations, municipal corporations and public and quasi-public corporations.**

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

5 (d) "Public property" means any real property or facility owned or leased by a public  
 6 employer.

7 (2) A public employer may not:

8 (a) Engage in, or use public funds to support, actions to assist, promote or deter union  
 9 organizing;

10 (b) Use public property to hold a meeting with any employee or supervisor if the purpose  
 11 of the meeting is to assist, promote or deter union organizing, unless the public property is  
 12 equally available, without charge, to the general public for holding a meeting; or

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

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

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

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

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

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

25 (4)(a) This section shall be enforced by the Bureau of Labor and Industries, which shall  
 26 adopt rules necessary to implement and administer compliance.

27 (b) A civil action for a violation of this section may be brought by the bureau, or by any  
 28 state taxpayer on behalf of the people of the state, for injunctive relief, damages, civil pen-  
 29 alties and other appropriate equitable relief. All damages and civil penalties collected pursu-  
 30 ant to this section shall be paid to the Commissioner of the Bureau of Labor and Industries  
 31 to be applied toward the costs incurred in determining the violations, conducting hearings  
 32 and assessing and collecting the damages and penalties. The remainder, if any, shall be de-  
 33 posited by the commissioner in the General Fund of the State Treasury.

34 (c) Before filing a civil action under this section, a taxpayer shall give written notice to  
 35 the bureau of the alleged violation and the intent to bring suit. If the bureau commences an  
 36 action for the same alleged violation within 60 days after receiving the notice, a separate  
 37 action by the taxpayer is barred. A taxpayer may intervene as a plaintiff in any action  
 38 brought under this section. If the plaintiff prevails, a taxpayer plaintiff or taxpayer  
 39 intervenor who makes a substantial contribution to the action is entitled to recover reason-  
 40 able attorney fees and costs.

41 (d) A public employer that violates this section is liable for a civil penalty equal to triple  
 42 the amount of funds the public employer expends to assist, promote or deter union organiz-  
 43 ing.

44 **SECTION 4.** ORS 243.682 is amended to read:

45 243.682. (1) If a question of representation exists, the Employment Relations Board shall:

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

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

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

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

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

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

18 (2)(a) Notwithstanding subsection (1) of this section, when an employee, group of employees or  
 19 labor organization acting on behalf of the employees files a petition alleging that a majority of em-  
 20 ployees in a unit appropriate for the purpose of collective bargaining wish to be represented by a  
 21 labor organization for that purpose, **or when a group of unrepresented employees files a petition**  
 22 **stating that the unrepresented employees seek to be included in an existing bargaining unit,**  
 23 the board shall investigate the petition. If the board finds that a majority of the employees in a unit  
 24 appropriate for bargaining **or in a group of unrepresented employees seeking to be included in**  
 25 **an existing bargaining unit** have signed authorizations designating the labor organization specified  
 26 in the petition as the employees' bargaining representative and that no other labor organization is  
 27 currently certified or recognized as the exclusive representative of any of the employees in the unit  
 28 **or in the group of unrepresented employees seeking to be included in an existing bargaining**  
 29 **unit,** the board may not conduct an election but shall certify the labor organization as the exclusive  
 30 representative unless a petition for a representation election is filed as provided in subsection (3)  
 31 of this section.

32 (b) The board by rule shall develop guidelines and procedures for the designation by employees  
 33 of a bargaining representative in the manner described in paragraph (a) of this subsection. The  
 34 guidelines and procedures must include:

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

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

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

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

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

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

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

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

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

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

18 **SECTION 5. The amendments to ORS 243.682 by section 4 of this 2013 Act apply to pe-**  
19 **titions filed with the Employment Relations Board on or after the effective date of this 2013**  
20 **Act.**

21 **SECTION 6. This 2013 Act being necessary for the immediate preservation of the public**  
22 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
23 **July 1, 2013.**