

## SENATE AMENDMENTS TO HOUSE BILL 3342

By COMMITTEE ON RULES

July 5

- 1 On page 1 of the printed bill, line 2, after “ORS” insert “243.672, 243.676 and”.
- 2 In line 5, delete “2 and 3” and insert “3 and 4”.
- 3 After line 6, insert:
- 4 **“SECTION 2. Section 4 of this 2013 Act is added to and made a part of ORS 243.650 to**
- 5 **243.782.”.**
- 6 In line 7, delete “2” and insert “3”.
- 7 In line 14, delete “3” and insert “4”.
- 8 Delete lines 17 through 26.
- 9 On page 2, delete lines 1 through 43 and insert:
- 10 **“SECTION 4. (1) As used in this section:**
- 11 **“(a) ‘Assist, promote or deter union organizing’ means any attempt by a public employer**
- 12 **to influence the decision of any or all of its employees or the employees of its subcontractors**
- 13 **regarding:**
- 14 **“(A) Whether to support or oppose a labor organization that represents or seeks to rep-**
- 15 **resent those employees; or**
- 16 **“(B) Whether to become a member of any labor organization.**
- 17 **“(b) ‘Public funds’ means moneys drawn from the State Treasury or any special or trust**
- 18 **fund of the state government, including any moneys appropriated by the state government**
- 19 **and transferred to any public body, as defined in ORS 174.109, and any other moneys under**
- 20 **the control of a public official by virtue of office.**
- 21 **“(c) ‘Public property’ means any real property or facility owned or leased by a public**
- 22 **employer.**
- 23 **“(2) A public employer may not:**
- 24 **“(a) Use public funds to support actions to assist, promote or deter union organizing; or**
- 25 **“(b) Discharge, demote, harass or otherwise take adverse action against any individual**
- 26 **because the individual seeks to enforce this section or testifies, assists or participates in any**
- 27 **manner in an investigation, hearing or other proceeding to enforce this section.**
- 28 **“(3) If an employee requests the opinion of the employee’s employer or supervisor about**
- 29 **union organizing, nothing in this section prohibits the employer or supervisor from re-**
- 30 **sponding to the request of the employee.**
- 31 **“(4) This section does not apply to an activity performed, or to an expense incurred, in**
- 32 **connection with:**
- 33 **“(a) Addressing a grievance or negotiating or administering a collective bargaining**
- 34 **agreement.**
- 35 **“(b) Allowing a labor organization or its representatives access to the public employer’s**

1 facilities or property.

2 “(c) Performing an activity required by federal or state law or by a collective bargaining  
3 agreement.

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

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

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

10 “(b) Nothing in this section prohibits a public employer from spending public funds for  
11 the purpose of representing the public employer in a proceeding before the board or in a ju-  
12 dicial review of that proceeding.

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

19 “**SECTION 6.** ORS 243.672 is amended to read:

20 “243.672. (1) It is an unfair labor practice for a public employer or its designated representative  
21 to do any of the following:

22 “(a) Interfere with, restrain or coerce employees in or because of the exercise of rights guar-  
23 anteed in ORS 243.662.

24 “(b) Dominate, interfere with or assist in the formation, existence or administration of any em-  
25 ployee organization.

26 “(c) Discriminate in regard to hiring, tenure or any terms or condition of employment for the  
27 purpose of encouraging or discouraging membership in an employee organization. Nothing in this  
28 section is intended to prohibit the entering into of a fair-share agreement between a public employer  
29 and the exclusive bargaining representative of its employees. If a ‘fair-share’ agreement has been  
30 agreed to by the public employer and exclusive representative, nothing prohibits the deduction of  
31 the payment-in-lieu-of-dues from the salaries or wages of the employees.

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

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

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

37 “(g) Violate the provisions of any written contract with respect to employment relations in-  
38 cluding an agreement to arbitrate or to accept the terms of an arbitration award, where previously  
39 the parties have agreed to accept arbitration awards as final and binding upon them.

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

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

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

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

3 “(b) Refuse to bargain collectively in good faith with the public employer if the labor organiza-  
4 tion is an exclusive representative.

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

6 “(d) Violate the provisions of any written contract with respect to employment relations, in-  
7 cluding an agreement to arbitrate or to accept the terms of an arbitration award, where previously  
8 the parties have agreed to accept arbitration awards as final and binding upon them.

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

11 “(f) For any labor organization to engage in unconventional strike activity not protected for  
12 private sector employees under the National Labor Relations Act on June 6, 1995. This provision  
13 applies to sitdown, slowdown, rolling, intermittent or on-and-off again strikes.

14 “(g) For a labor organization or its agents to picket or cause, induce, or encourage to be  
15 picketed, or threaten to engage in such activity, at the residence or business premises of any indi-  
16 vidual who is a member of the governing body of a public employer, with respect to a dispute over  
17 a collective bargaining agreement or negotiations over employment relations, if an objective or ef-  
18 fect of such picketing is to induce another person to cease doing business with the governing body  
19 member’s business or to cease handling, transporting or dealing in goods or services produced at the  
20 governing body’s business. For purposes of this paragraph, a member of the Legislative Assembly is  
21 a member of the governing body of a public employer when the collective bargaining negotiation or  
22 dispute is between the State of Oregon and a labor organization. The Governor and other statewide  
23 elected officials are not considered members of a governing body for purposes of this paragraph.  
24 Nothing in this paragraph may be interpreted or applied in a manner that violates the right of free  
25 speech and assembly as protected by the Constitution of the United States or the Constitution of the  
26 State of Oregon.

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

36 “**SECTION 7.** ORS 243.676 is amended to read:

37 “243.676. (1) Whenever a written complaint is filed alleging that any person has engaged in or  
38 is engaging in any unfair labor practice listed in ORS 243.672 (1) and (2) and 243.752, the Employ-  
39 ment Relations Board or its agent shall:

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

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

44 “(c) Set the matter for hearing if the board finds in its investigation made pursuant to paragraph  
45 (b) of this subsection that an issue of fact or law exists. The hearing shall be before the board or

1 an agent of the board not more than 20 days after a copy of the complaint has been served on the  
2 person.

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

6 “(a) State its findings of fact;

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

9 “(c) Take such affirmative action, including but not limited to the reinstatement of employees  
10 with or without back pay, as necessary to effectuate the purposes of ORS 240.060, 240.065, 240.080,  
11 240.123, 243.650 to 243.782, 292.055 and 341.290;

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

13 “(e) Designate the amount and award attorney fees, if any, to the prevailing party on appeal,  
14 including proceedings for Supreme Court review, of a board order.

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

17 “(a) Issue an order dismissing the complaint; and

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

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

22 “[a] (A) The complaint has been affirmed pursuant to subsection (2) of this section and the  
23 board finds that the person who has committed, or who is engaging, in an unfair labor practice has  
24 done so repetitively, knowing that the action taken was an unfair labor practice and took the action  
25 disregarding this knowledge, or that the action constituting the unfair labor practice was egregious;  
26 or

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

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

33 “(5) As used in subsections (1) to (4) of this section, ‘person’ includes but is not limited to indi-  
34 viduals, labor organizations, associations and public employers.”.

35 In line 44, delete “4” and insert “8”.

36 On page 4, line 18, delete “5” and insert “9” and delete “4” and insert “8”.

37 In line 21, delete “6” and insert “10”.