

DRAFT

SUMMARY

Imposes limitations on arbitrators' decisions concerning alleged misconduct by law enforcement officers.

Prescribes method for selecting arbitrator to serve in arbitration proceeding concerning law enforcement officer misconduct.

Establishes Commission on Statewide Law Enforcement Standards of Conduct and Discipline to adopt uniform standards of conduct for law enforcement officers and disciplinary standards by which law enforcement agencies and arbitrators shall make determinations regarding imposition of disciplinary action against law enforcement officers. Requires commission to report to Joint Committee on Transparent Policing and Use of Force Reform, by July 1, 2021, on details of adopted uniform standards and progress by law enforcement agencies in applying standards.

Removes discipline guide or discipline matrix as mandatory subject of bargaining. Requires law enforcement agencies and arbitrators to comply with uniform standards established by Commission on Statewide Law Enforcement Standards of Conduct and Discipline when making decisions regarding law enforcement disciplinary matters. Restricts arbitrator discretion to impose disciplinary action that is different than disciplinary action imposed by law enforcement agency if agency's action was made in accordance with uniform standards adopted by commission. Becomes operative July 1, 2021.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to standards concerning law enforcement officer conduct; creating
3 new provisions; amending ORS 243.650 and 243.706; and declaring an
4 emergency.

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

6 **SECTION 1. Sections 2 and 3 of this 2021 Act are added to and made**
7 **a part of ORS 243.650 to 243.806.**

1 **SECTION 2.** (1) For purposes of an arbitration proceeding under
2 **ORS 243.706** concerning alleged misconduct by a law enforcement offi-
3 **cer, when a law enforcement agency has determined that an officer**
4 **has engaged in misconduct, an arbitrator may not make a determi-**
5 **nation regarding the misconduct that differs from the agency’s deter-**
6 **mination if evidence exists on the record that would permit a**
7 **reasonable person to conclude that the officer engaged in misconduct.**

8 **(2)(a) Notwithstanding ORS 243.706 (1), and subject to paragraph (b)**
9 **of this subsection, in carrying out an arbitration proceeding described**
10 **under ORS 243.706 (3), the Employment Relations Board shall appoint**
11 **a person from a list of qualified, indifferent and unbiased persons to**
12 **serve as the arbitrator of the proceeding. The board shall submit to**
13 **the law enforcement agency and the exclusive representative the list**
14 **of persons who may serve as arbitrators.**

15 **(b) After the board has selected a person from the list to serve as**
16 **the arbitrator of the proceeding, each of the parties subject to the**
17 **proceeding is entitled to one opportunity to object to the board’s pro-**
18 **posed arbitrator. If a party objects to the proposed arbitrator, the**
19 **board shall select an alternative person to serve as the arbitrator. If**
20 **the other party objects to the alternative person, the board shall make**
21 **a final selection from the names remaining on the list as to who shall**
22 **serve as the arbitrator of the proceeding.**

23 **(3) As used in this section, “law enforcement agency” and “law**
24 **enforcement officer” have the meanings given those terms in ORS**
25 **131.930.**

26 **SECTION 3.** (1) For matters concerning alleged misconduct by a law
27 **enforcement officer, a law enforcement agency located anywhere in**
28 **this state and an arbitrator who serves in an arbitration proceeding**
29 **described under ORS 243.706 (3) shall make determinations regarding**
30 **the alleged misconduct and impose disciplinary action in response to**
31 **such determinations in accordance with the uniform standards**

1 adopted by the Commission on Statewide Law Enforcement Standards
2 of Conduct and Discipline under section 4 of this 2021 Act.

3 (2) As used in this section, “law enforcement agency” and “law
4 enforcement officer” have the meanings given those terms in ORS
5 131.930.

6 **SECTION 4.** (1) The Commission on Statewide Law Enforcement
7 Standards of Conduct and Discipline is established for the purpose of
8 adopting rules that prescribe uniform:

9 (a) Standards of conduct, including guidelines and procedures, to
10 which law enforcement officers shall adhere; and

11 (b) Disciplinary standards and procedures by which a law enforce-
12 ment agency and an arbitrator who serves in an arbitration proceeding
13 described under ORS 243.706 (3) shall make determinations regarding
14 alleged misconduct by a law enforcement officer and shall impose
15 disciplinary action in response to such determinations.

16 (2) The commission consists of 11 members as follows:

17 (a) The Director of the Department of Public Safety Standards and
18 Training.

19 (b) The Attorney General.

20 (c) The Director of the Department of Public Safety Standards and
21 Training and the Attorney General shall jointly appoint nine members
22 of the commission consistent with the following:

23 (A) Members shall be appointed to ensure that there is broad rep-
24 resentation on the commission of individuals and organizations that
25 will be impacted by the standards adopted by the commission, includ-
26 ing but not limited to law enforcement agencies, labor organizations,
27 organizations that advocate on behalf of the cities and counties in this
28 state and community-based organizations that represent the interests
29 of historically marginalized communities.

30 (B) Not more than three members shall be law enforcement offi-
31 cers. Members who are law enforcement officers may not be of the

1 same law enforcement rank.

2 (3) At a minimum, the uniform standards described under sub-
3 section (1) of this section must address standards of conduct and dis-
4 cipline regarding:

5 (a) Use of force;

6 (b) Sexual harassment;

7 (c) Sexual assault;

8 (d) Assault;

9 (e) Conduct that is motivated by or based on a real or perceived
10 factor of an individual's race, ethnicity, national origin, sex, gender
11 identity, sexual orientation, religion or homelessness;

12 (f) Professionalism; and

13 (g) The use of drugs or alcohol while on duty.

14 (4) On or before July 1, 2021, the commission shall adopt and publish
15 rules pursuant to ORS chapter 183 to establish the uniform standards
16 described under subsection (1) of this section.

17 (5) The commission shall review the standards described under
18 subsection (1) of this section at least once every two years.

19 (6) The meetings of the commission shall be open to the public in
20 accordance with state law. Records of the commission shall be open
21 and available to the public in accordance with state law.

22 (7) The commission shall establish and implement an open hearing
23 process for public input and deliberation before the commission adopts
24 rules that establish the standards described under subsection (1) of
25 this section, including:

26 (a) Public notice;

27 (b) Public outreach to solicit broad public participation; and

28 (c) Public hearings to receive public comment.

29 (8) A majority of the members of the commission constitutes a
30 quorum for the transaction of business.

31 (9) Official action by the commission requires the approval of a

1 majority of the commission.

2 (10) The term of a member appointed under subsection (2)(c) of this
3 section shall be two years. If there is a vacancy on the commission for
4 any reason, the Director of the Department of Public Safety Standards
5 and Training and the Attorney General shall appoint a person to the
6 unexpired term.

7 (11) The members of the commission shall elect one person from the
8 Department of Public Safety Standards and Training and one person
9 from the Department of Justice from among the members of the
10 commission to serve as cochairpersons of the commission who shall
11 preside over meetings and execute the duties determined by the com-
12 mission to be necessary.

13 (12) The commission may adopt rules necessary for the operation
14 of the commission.

15 (13) A member of the commission is entitled to compensation and
16 expenses as provided in ORS 292.495.

17 (14)(a) The commission shall prepare and submit a report in the
18 manner provided by ORS 192.245 to the Joint Committee on Transpar-
19 ent Policing and Use of Force Reform no later than July 1, 2021, and
20 July 1 every year thereafter.

21 (b) The initial report must describe the development and adoption
22 of the uniform standards described under subsection (1) of this section,
23 including the methodology used to apprise each law enforcement
24 agency in this state of the standards. The commission shall include in
25 reports submitted after July 1, 2021, information regarding each
26 agency's progress toward implementing and applying the uniform
27 standards and the commission's recommendations on updates to the
28 standards, as are considered necessary.

29 (15) As used in this section:

30 (a) "Assault" has the meaning given that term in ORS 163.115.

31 (b) "Law enforcement agency" and "law enforcement officer" have

1 **the meanings given those terms in ORS 131.930.**

2 **(c) “Sexual assault” has the meaning given that term in ORS**
3 **243.317.**

4 **SECTION 5.** ORS 243.650, as amended by section 2, chapter 18, Oregon
5 Laws 2020 (first special session) (Enrolled Senate Bill 1604), is amended to
6 read:

7 243.650. As used in ORS 243.650 to 243.806, unless the context requires
8 otherwise:

9 (1) “Appropriate bargaining unit” means the unit designated by the Em-
10 ployment Relations Board or voluntarily recognized by the public employer
11 to be appropriate for collective bargaining. However, an appropriate bar-
12 gaining unit may not include both academically licensed and unlicensed or
13 nonacademically licensed school employees. Academically licensed units may
14 include but are not limited to teachers, nurses, counselors, therapists, psy-
15 chologists, child development specialists and similar positions. This limita-
16 tion does not apply to any bargaining unit certified or recognized prior to
17 June 6, 1995, or to any school district with fewer than 50 employees.

18 (2) “Board” means the Employment Relations Board.

19 (3) “Certification” means official recognition by the board that a labor
20 organization is the exclusive representative for all of the employees in the
21 appropriate bargaining unit.

22 (4) “Collective bargaining” means the performance of the mutual obli-
23 gation of a public employer and the representative of its employees to meet
24 at reasonable times and confer in good faith with respect to employment re-
25 lations for the purpose of negotiations concerning mandatory subjects of
26 bargaining, to meet and confer in good faith in accordance with law with
27 respect to any dispute concerning the interpretation or application of a col-
28 lective bargaining agreement, and to execute written contracts incorporating
29 agreements that have been reached on behalf of the public employer and the
30 employees in the bargaining unit covered by such negotiations. The obli-
31 gation to meet and negotiate does not compel either party to agree to a

1 proposal or require the making of a concession. This subsection may not be
2 construed to prohibit a public employer and a certified or recognized repre-
3 sentative of its employees from discussing or executing written agreements
4 regarding matters other than mandatory subjects of bargaining that are not
5 prohibited by law as long as there is mutual agreement of the parties to
6 discuss these matters, which are permissive subjects of bargaining.

7 (5) "Compulsory arbitration" means the procedure whereby parties in-
8 volved in a labor dispute are required by law to submit their differences to
9 a third party for a final and binding decision.

10 (6) "Confidential employee" means one who assists and acts in a confi-
11 dential capacity to a person who formulates, determines and effectuates
12 management policies in the area of collective bargaining.

13 (7)(a) "Employment relations" includes, but is not limited to, matters
14 concerning direct or indirect monetary benefits, hours, vacations, sick leave,
15 labor organization access to and communication with represented employees,
16 grievance procedures and other conditions of employment.

17 (b) "Employment relations" does not include subjects determined to be
18 permissive, nonmandatory subjects of bargaining by the Employment Re-
19 lations Board prior to June 6, 1995.

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

24 (d) "Employment relations" does not include subjects that have an in-
25 substantial or de minimis effect on public employee wages, hours, and other
26 terms and conditions of employment.

27 (e) For school district bargaining, "employment relations" excludes class
28 size, the school or educational calendar, standards of performance or criteria
29 for evaluation of teachers, the school curriculum, reasonable dress, grooming
30 and at-work personal conduct requirements respecting smoking, gum chewing
31 and similar matters of personal conduct, the standards and procedures for

1 student discipline, the time between student classes, the selection, agendas
2 and decisions of 21st Century Schools Councils established under ORS
3 329.704, requirements for expressing milk under ORS 653.077, and any other
4 subject proposed that is permissive under paragraphs (b), (c) and (d) of this
5 subsection.

6 (f) For employee bargaining involving employees covered by ORS 243.736
7 and employees of the Department of Corrections who have direct contact
8 with adults in custody, “employment relations” includes safety issues that
9 have an impact on the on-the-job safety of the employees or staffing levels
10 that have a significant impact on the on-the-job safety of the employees.

11 [(g) *For employee bargaining involving sworn law enforcement officers of*
12 *a law enforcement agency, as those terms are defined in ORS 131.930, “em-*
13 *ployment relations” includes the development of a discipline guide or discipline*
14 *matrix as those terms are defined in ORS 243.706.]*

15 [(h)] (g) For all other employee bargaining except school district bar-
16 gaining and except as provided in paragraph (f) of this subsection, “employ-
17 ment relations” excludes staffing levels and safety issues (except those
18 staffing levels and safety issues that have a direct and substantial effect on
19 the on-the-job safety of public employees), scheduling of services provided to
20 the public, determination of the minimum qualifications necessary for any
21 position, criteria for evaluation or performance appraisal, assignment of du-
22 ties, workload when the effect on duties is insubstantial, reasonable dress,
23 grooming, and at-work personal conduct requirements respecting smoking,
24 gum chewing, and similar matters of personal conduct at work, and any
25 other subject proposed that is permissive under paragraphs (b), (c) and (d)
26 of this subsection.

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

31 (9) “Fact-finding” means identification of the major issues in a particular

1 labor dispute by one or more impartial individuals who review the positions
2 of the parties, resolve factual differences and make recommendations for
3 settlement of the dispute.

4 (10) "Fair-share agreement" means an agreement between the public em-
5 ployer and the recognized or certified bargaining representative of public
6 employees whereby employees who are not members of the employee organ-
7 ization are required to make an in-lieu-of-dues payment to an employee or-
8 ganization except as provided in ORS 243.666. Upon the filing with the board
9 of a petition by 30 percent or more of the employees in an appropriate bar-
10 gaining unit covered by such union security agreement declaring they desire
11 that the agreement be rescinded, the board shall take a secret ballot of the
12 employees in the unit and certify the results thereof to the recognized or
13 certified bargaining representative and to the public employer. Unless a
14 majority of the votes cast in an election favor the union security agreement,
15 the board shall certify deauthorization of the agreement. A petition for de-
16 authorization of a union security agreement must be filed not more than 90
17 calendar days after the collective bargaining agreement is executed. Only
18 one such election may be conducted in any appropriate bargaining unit dur-
19 ing the term of a collective bargaining agreement between a public employer
20 and the recognized or certified bargaining representative.

21 (11) "Final offer" means the proposed contract language and cost sum-
22 mary submitted to the mediator within seven days of the declaration of im-
23 passe.

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

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

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

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

7 (16) “Managerial employee” means an employee of the State of Oregon
8 or a public university listed in ORS 352.002 who possesses authority to for-
9 mulate and carry out management decisions or who represents management’s
10 interest by taking or effectively recommending discretionary actions that
11 control or implement employer policy, and who has discretion in the per-
12 formance of these management responsibilities beyond the routine discharge
13 of duties. A “managerial employee” need not act in a supervisory capacity
14 in relation to other employees. Notwithstanding this subsection, “manage-
15 rial employee” does not include faculty members at a community college,
16 college or university.

17 (17) “Mediation” means assistance by an impartial third party in recon-
18 ciling a labor dispute between the public employer and the exclusive repre-
19 sentative regarding employment relations.

20 (18) “Payment-in-lieu-of-dues” means an assessment to defray the cost for
21 services by the exclusive representative in negotiations and contract admin-
22 istration of all persons in an appropriate bargaining unit who are not mem-
23 bers of the organization serving as exclusive representative of the employees.
24 The payment must be equivalent to regular union dues and assessments, if
25 any, or must be an amount agreed upon by the public employer and the ex-
26 clusive representative of the employees.

27 (19) “Public employee” means an employee of a public employer but does
28 not include elected officials, persons appointed to serve on boards or com-
29 missions, incarcerated persons working under Article I, section 41, of the
30 Oregon Constitution, or persons who are confidential employees, supervisory
31 employees or managerial employees.

1 (20) "Public employer" means the State of Oregon, and the following pol-
2 itical subdivisions: Cities, counties, community colleges, school districts,
3 special districts, mass transit districts, metropolitan service districts, public
4 service corporations or municipal corporations and public and quasi-public
5 corporations.

6 (21) "Public employer representative" includes any individual or individ-
7 uals specifically designated by the public employer to act in its interests in
8 all matters dealing with employee representation, collective bargaining and
9 related issues.

10 (22) "Strike" means a public employee's refusal in concerted action with
11 others to report for duty, or his or her willful absence from his or her posi-
12 tion, or his or her stoppage of work, or his or her absence in whole or in
13 part from the full, faithful or proper performance of his or her duties of
14 employment, for the purpose of inducing, influencing or coercing a change
15 in the conditions, compensation, rights, privileges or obligations of public
16 employment; however, nothing shall limit or impair the right of any public
17 employee to lawfully express or communicate a complaint or opinion on any
18 matter related to the conditions of employment.

19 (23)(a) "Supervisory employee" means any individual having authority in
20 the interest of the employer to hire, transfer, suspend, lay off, recall, pro-
21 mote, discharge, assign, reward or discipline other employees, or responsibly
22 to direct them, or to adjust their grievances, or effectively to recommend
23 such action, if in connection therewith, the exercise of the authority is not
24 of a merely routine or clerical nature but requires the use of independent
25 judgment. Failure to assert supervisory status in any Employment Relations
26 Board proceeding or in negotiations for any collective bargaining agreement
27 does not thereafter prevent assertion of supervisory status in any subsequent
28 board proceeding or contract negotiation.

29 (b) "Supervisory employee" includes a faculty member of a public univer-
30 sity listed in ORS 352.002 or the Oregon Health and Science University who:

31 (A) Is employed as a president, vice president, provost, vice provost, dean,

1 associate dean, assistant dean, head or equivalent position; or

2 (B) Is employed in an administrative position without a reasonable ex-
3 pectation of teaching, research or other scholarly accomplishments.

4 (c) “Supervisory employee” does not include:

5 (A) A nurse, charge nurse or nurse holding a similar position if that po-
6 sition has not traditionally been classified as supervisory;

7 (B) A firefighter prohibited from striking by ORS 243.736 who assigns,
8 transfers or directs the work of other employees but does not have the au-
9 thority to hire, discharge or impose economic discipline on those employees;

10 (C) A faculty member of a public university listed in ORS 352.002 or the
11 Oregon Health and Science University who is not a faculty member described
12 in paragraph (b) of this subsection; or

13 (D) An employee of the Oregon State Police who:

14 (i) Serves in a rank equivalent to or below the rank of sergeant;

15 (ii) Is prohibited from striking by ORS 243.736; and

16 (iii) Assigns, transfers or directs the work of other employees but does
17 not hire, discharge or impose economic discipline on those employees.

18 (24) “Unfair labor practice” means the commission of an act designated
19 an unfair labor practice in ORS 243.672.

20 (25) “Voluntary arbitration” means the procedure whereby parties in-
21 volved in a labor dispute mutually agree to submit their differences to a
22 third party for a final and binding decision.

23 **SECTION 6.** ORS 243.650, as amended by section 2, chapter 146, Oregon
24 Laws 2019, and section 3, chapter 18, Oregon Laws 2020 (first special session)
25 (Enrolled Senate Bill 1604), is amended to read:

26 243.650. As used in ORS 243.650 to 243.806, unless the context requires
27 otherwise:

28 (1) “Appropriate bargaining unit” means the unit designated by the Em-
29 ployment Relations Board or voluntarily recognized by the public employer
30 to be appropriate for collective bargaining. However, an appropriate bar-
31 gaining unit may not include both academically licensed and unlicensed or

1 nonacademically licensed school employees. Academically licensed units may
2 include but are not limited to teachers, nurses, counselors, therapists, psy-
3 chologists, child development specialists and similar positions. This limita-
4 tion does not apply to any bargaining unit certified or recognized prior to
5 June 6, 1995, or to any school district with fewer than 50 employees.

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

7 (3) "Certification" means official recognition by the board that a labor
8 organization is the exclusive representative for all of the employees in the
9 appropriate bargaining unit.

10 (4) "Collective bargaining" means the performance of the mutual obli-
11 gation of a public employer and the representative of its employees to meet
12 at reasonable times and confer in good faith with respect to employment re-
13 lations for the purpose of negotiations concerning mandatory subjects of
14 bargaining, to meet and confer in good faith in accordance with law with
15 respect to any dispute concerning the interpretation or application of a col-
16 lective bargaining agreement, and to execute written contracts incorporating
17 agreements that have been reached on behalf of the public employer and the
18 employees in the bargaining unit covered by such negotiations. The obli-
19 gation to meet and negotiate does not compel either party to agree to a
20 proposal or require the making of a concession. This subsection may not be
21 construed to prohibit a public employer and a certified or recognized repre-
22 sentative of its employees from discussing or executing written agreements
23 regarding matters other than mandatory subjects of bargaining that are not
24 prohibited by law as long as there is mutual agreement of the parties to
25 discuss these matters, which are permissive subjects of bargaining.

26 (5) "Compulsory arbitration" means the procedure whereby parties in-
27 volved in a labor dispute are required by law to submit their differences to
28 a third party for a final and binding decision.

29 (6) "Confidential employee" means one who assists and acts in a confi-
30 dential capacity to a person who formulates, determines and effectuates
31 management policies in the area of collective bargaining.

1 (7)(a) “Employment relations” includes, but is not limited to, matters
2 concerning direct or indirect monetary benefits, hours, vacations, sick leave,
3 labor organization access to and communication with represented employees,
4 grievance procedures and other conditions of employment.

5 (b) “Employment relations” does not include subjects determined to be
6 permissive, nonmandatory subjects of bargaining by the Employment Re-
7 lations Board prior to June 6, 1995.

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

12 (d) “Employment relations” does not include subjects that have an in-
13 substantial or de minimis effect on public employee wages, hours, and other
14 terms and conditions of employment.

15 (e) For school district bargaining, “employment relations” excludes class
16 size, the school or educational calendar, standards of performance or criteria
17 for evaluation of teachers, the school curriculum, reasonable dress, grooming
18 and at-work personal conduct requirements respecting smoking, gum chewing
19 and similar matters of personal conduct, the standards and procedures for
20 student discipline, the time between student classes, the selection, agendas
21 and decisions of 21st Century Schools Councils established under ORS
22 329.704, requirements for expressing milk under ORS 653.077, and any other
23 subject proposed that is permissive under paragraphs (b), (c) and (d) of this
24 subsection.

25 (f) For employee bargaining involving employees covered by ORS 243.736
26 and employees of the Department of Corrections who have direct contact
27 with adults in custody, “employment relations” includes safety issues that
28 have an impact on the on-the-job safety of the employees or staffing levels
29 that have a significant impact on the on-the-job safety of the employees.

30 [(g) For employee bargaining involving sworn law enforcement officers of
31 a law enforcement agency, as those terms are defined in ORS 131.930, “em-

1 *ployment relations” includes the development of a discipline guide or discipline*
2 *matrix as those terms are defined in ORS 243.706.]*

3 [(h)] (g) For all other employee bargaining except school district bar-
4 gaining and except as provided in paragraph (f) of this subsection, “employ-
5 ment relations” excludes staffing levels and safety issues (except those
6 staffing levels and safety issues that have a direct and substantial effect on
7 the on-the-job safety of public employees), scheduling of services provided to
8 the public, determination of the minimum qualifications necessary for any
9 position, criteria for evaluation or performance appraisal, assignment of du-
10 ties, workload when the effect on duties is insubstantial, reasonable dress,
11 grooming, and at-work personal conduct requirements respecting smoking,
12 gum chewing, and similar matters of personal conduct at work, and any
13 other subject proposed that is permissive under paragraphs (b), (c) and (d)
14 of this subsection.

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

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

23 (10) “Fair-share agreement” means an agreement between the public em-
24 ployer and the recognized or certified bargaining representative of public
25 employees whereby employees who are not members of the employee organ-
26 ization are required to make an in-lieu-of-dues payment to an employee or-
27 ganization except as provided in ORS 243.666. Upon the filing with the board
28 of a petition by 30 percent or more of the employees in an appropriate bar-
29 gaining unit covered by such union security agreement declaring they desire
30 that the agreement be rescinded, the board shall take a secret ballot of the
31 employees in the unit and certify the results thereof to the recognized or

1 certified bargaining representative and to the public employer. Unless a
2 majority of the votes cast in an election favor the union security agreement,
3 the board shall certify deauthorization of the agreement. A petition for de-
4 authorization of a union security agreement must be filed not more than 90
5 calendar days after the collective bargaining agreement is executed. Only
6 one such election may be conducted in any appropriate bargaining unit dur-
7 ing the term of a collective bargaining agreement between a public employer
8 and the recognized or certified bargaining representative.

9 (11) "Final offer" means the proposed contract language and cost sum-
10 mary submitted to the mediator within seven days of the declaration of im-
11 passe.

12 (12) "Labor dispute" means any controversy concerning employment re-
13 lations or concerning the association or representation of persons in negoti-
14 ating, fixing, maintaining, changing, or seeking to arrange terms or
15 conditions of employment relations, regardless of whether the disputants
16 stand in the proximate relation of employer and employee.

17 (13) "Labor organization" means any organization that has as one of its
18 purposes representing employees in their employment relations with public
19 employers.

20 (14) "Last best offer package" means the offer exchanged by parties not
21 less than 14 days prior to the date scheduled for an interest arbitration
22 hearing.

23 (15) "Legislative body" means the Legislative Assembly, the city council,
24 the county commission and any other board or commission empowered to
25 levy taxes.

26 (16) "Managerial employee" means an employee of the State of Oregon
27 or a public university listed in ORS 352.002 who possesses authority to for-
28 mulate and carry out management decisions or who represents management's
29 interest by taking or effectively recommending discretionary actions that
30 control or implement employer policy, and who has discretion in the per-
31 formance of these management responsibilities beyond the routine discharge

1 of duties. A “managerial employee” need not act in a supervisory capacity
2 in relation to other employees. Notwithstanding this subsection, “manage-
3 rial employee” does not include faculty members at a community college,
4 college or university.

5 (17) “Mediation” means assistance by an impartial third party in recon-
6 ciling a labor dispute between the public employer and the exclusive repre-
7 sentative regarding employment relations.

8 (18) “Payment-in-lieu-of-dues” means an assessment to defray the cost for
9 services by the exclusive representative in negotiations and contract admin-
10 istration of all persons in an appropriate bargaining unit who are not mem-
11 bers of the organization serving as exclusive representative of the employees.
12 The payment must be equivalent to regular union dues and assessments, if
13 any, or must be an amount agreed upon by the public employer and the ex-
14 clusive representative of the employees.

15 (19) “Public employee” means an employee of a public employer but does
16 not include elected officials, persons appointed to serve on boards or com-
17 missions, incarcerated persons working under Article I, section 41, of the
18 Oregon Constitution, or persons who are confidential employees, supervisory
19 employees or managerial employees.

20 (20) “Public employer” means the State of Oregon, and the following pol-
21 itical subdivisions: Cities, counties, community colleges, school districts,
22 special districts, mass transit districts, metropolitan service districts, public
23 service corporations or municipal corporations and public and quasi-public
24 corporations.

25 (21) “Public employer representative” includes any individual or individ-
26 uals specifically designated by the public employer to act in its interests in
27 all matters dealing with employee representation, collective bargaining and
28 related issues.

29 (22) “Strike” means a public employee’s refusal in concerted action with
30 others to report for duty, or his or her willful absence from his or her posi-
31 tion, or his or her stoppage of work, or his or her absence in whole or in

1 part from the full, faithful or proper performance of his or her duties of
2 employment, for the purpose of inducing, influencing or coercing a change
3 in the conditions, compensation, rights, privileges or obligations of public
4 employment; however, nothing shall limit or impair the right of any public
5 employee to lawfully express or communicate a complaint or opinion on any
6 matter related to the conditions of employment.

7 (23)(a) "Supervisory employee" means any individual having authority in
8 the interest of the employer to hire, transfer, suspend, lay off, recall, pro-
9 mote, discharge, assign, reward or discipline other employees, or responsibly
10 to direct them, or to adjust their grievances, or effectively to recommend
11 such action, if in connection therewith, the exercise of the authority is not
12 of a merely routine or clerical nature but requires the use of independent
13 judgment. Failure to assert supervisory status in any Employment Relations
14 Board proceeding or in negotiations for any collective bargaining agreement
15 does not thereafter prevent assertion of supervisory status in any subsequent
16 board proceeding or contract negotiation.

17 (b) "Supervisory employee" includes a faculty member of a public univer-
18 sity listed in ORS 352.002 or the Oregon Health and Science University who:

19 (A) Is employed as a president, vice president, provost, vice provost, dean,
20 associate dean, assistant dean, head or equivalent position; or

21 (B) Is employed in an administrative position without a reasonable ex-
22 pectation of teaching, research or other scholarly accomplishments.

23 (c) "Supervisory employee" does not include:

24 (A) A nurse, charge nurse or nurse holding a similar position if that po-
25 sition has not traditionally been classified as supervisory;

26 (B) A firefighter prohibited from striking by ORS 243.736 who assigns,
27 transfers or directs the work of other employees but does not have the au-
28 thority to hire, discharge or impose economic discipline on those employees;
29 or

30 (C) A faculty member of a public university listed in ORS 352.002 or the
31 Oregon Health and Science University who is not a faculty member described

1 in paragraph (b) of this subsection.

2 (24) “Unfair labor practice” means the commission of an act designated
3 an unfair labor practice in ORS 243.672.

4 (25) “Voluntary arbitration” means the procedure whereby parties in-
5 volved in a labor dispute mutually agree to submit their differences to a
6 third party for a final and binding decision.

7 **SECTION 7.** ORS 243.706, as amended by section 1, chapter 18, Oregon
8 Laws 2020 (first special session) (Enrolled Senate Bill 1604), is amended to
9 read:

10 243.706. (1) A public employer may enter into a written agreement with
11 the exclusive representative of an appropriate bargaining unit setting forth
12 a grievance procedure culminating in binding arbitration or any other dis-
13 pute resolution process agreed to by the parties. As a condition of
14 enforceability, any arbitration award that orders the reinstatement of a
15 public employee or otherwise relieves the public employee of responsibility
16 for misconduct shall comply with public policy requirements as clearly de-
17 fined in statutes or judicial decisions including but not limited to policies
18 respecting sexual harassment or sexual misconduct, unjustified and egregious
19 use of physical or deadly force and serious criminal misconduct, related to
20 work. In addition, with respect to claims that a grievant should be reinstated
21 or otherwise relieved of responsibility for misconduct based upon the public
22 employer’s alleged previous differential treatment of employees for the same
23 or similar conduct, the arbitration award must conform to the following
24 principles:

25 (a) Some misconduct is so egregious that no employee can reasonably rely
26 on past treatment for similar offenses as a justification or defense to dis-
27 charge or other discipline.

28 (b) Public managers have a right to change disciplinary policies at any
29 time, notwithstanding prior practices, if such managers give reasonable ad-
30 vance notice to affected employees and the change does not otherwise violate
31 a collective bargaining agreement.

1 (2) In addition to subsection (1) of this section, a public employer may
2 enter into a written agreement with the exclusive representative of its em-
3 ployees providing that a labor dispute over conditions and terms of a con-
4 tract may be resolved through binding arbitration.

5 (3) Notwithstanding subsection (1) of this section, when an arbitration
6 proceeding involves alleged misconduct by a sworn law enforcement officer
7 of any law enforcement agency, as those terms are defined in ORS 131.930,
8 and the arbitrator makes a finding that misconduct has occurred consistent
9 with the law enforcement agency's finding of misconduct, the arbitration
10 award may not order any disciplinary action that differs from the discipli-
11 nary action imposed by the agency, if the disciplinary action imposed by the
12 agency **was in accordance with the uniform standards adopted by the**
13 **Commission on Statewide Law Enforcement Standards of Conduct and**
14 **Discipline established under section 4 of this 2021 Act** [*is consistent with*
15 *the provisions of a discipline guide or discipline matrix adopted by the agency*
16 *as a result of collective bargaining and incorporated into the agency's disci-*
17 *plinary policies*].

18 (4) In an arbitration proceeding under this section, the arbitrators, or a
19 majority of the arbitrators, may:

20 (a) Issue subpoenas on their own motion or at the request of a party to
21 the proceeding to:

22 (A) Compel the attendance of a witness properly served by either party;
23 and

24 (B) Require from either party the production of books, papers and docu-
25 ments the arbitrators find are relevant to the proceeding;

26 (b) Administer oaths or affirmations to witnesses; and

27 (c) Adjourn a hearing from day to day, or for a longer time, and from
28 place to place.

29 (5) The arbitrators shall promptly provide a copy of a subpoena issued
30 under this section to each party to the arbitration proceeding.

31 (6) The arbitrators issuing a subpoena under this section may rule on

1 objections to the issuance of the subpoena.

2 (7) If a person fails to comply with a subpoena issued under this section
3 or if a witness refuses to testify on a matter on which the witness may be
4 lawfully questioned, the party who requested the subpoena or seeks the tes-
5 timony may apply to the arbitrators for an order authorizing the party to
6 apply to the circuit court of any county to enforce the subpoena or compel
7 the testimony. On the application of the attorney of record for the party or
8 on the application of the arbitrators, or a majority of the arbitrators, the
9 court may require the person or witness to show cause why the person or
10 witness should not be punished for contempt of court to the same extent and
11 purpose as if the proceedings were pending before the court.

12 (8) Witnesses appearing pursuant to subpoena, other than parties or offi-
13 cers or employees of the public employer, shall receive fees and mileage as
14 prescribed by law for witnesses in ORS 44.415 (2).

15 [(9) *As used in this section:*]

16 [(a) *“Discipline guide” means a grid that is designed to provide parameters*
17 *for the level of discipline to be imposed for an act of misconduct that is cate-*
18 *gorized by the severity of the misconduct and that take into account the*
19 *presumptive level of discipline for the misconduct and any aggravating or*
20 *mitigating factors.]*

21 [(b) *“Discipline matrix” means a grid used to determine the level of disci-*
22 *pline to be imposed for an act of misconduct that is categorized by the severity*
23 *of the misconduct, according to the intersection where the category of miscon-*
24 *duct and the level of disciplinary action meet.]*

25 **SECTION 8. The amendments to ORS 243.650 and 243.706 by sections**
26 **5 to 7 of this 2021 Act apply to collective bargaining agreements en-**
27 **tered into or renewed on or after July 1, 2021.**

28 **SECTION 9. (1) Section 3 of this 2021 Act becomes operative on July**
29 **1, 2021.**

30 **(2) The amendments to ORS 243.650 and 243.706 by sections 5 to 7**
31 **of this 2021 Act become operative on July 1, 2021.**

1 **SECTION 10. This 2021 Act being necessary for the immediate**
2 **preservation of the public peace, health and safety, an emergency is**
3 **declared to exist, and this 2021 Act takes effect on its passage.**

4
