

Enrolled House Bill 2016

Sponsored by Representatives WITT, LIVELY, Senators GOLDEN, TAYLOR; Representatives ALONSO LEON, BARKER, CLEM, EVANS, FAHEY, GREENLICK, HELM, HERNANDEZ, HOLVEY, KENY-GUYER, KOTEK, MCLAIN, MEEK, MITCHELL, NOSSE, PILUSO, POWER, PRUSAK, SALINAS, SANCHEZ, SCHOUTEN, SMITH WARNER, WILDE, WILLIAMSON, Senators BEYER, BURDICK, DEMBROW, MANNING JR, PROZANSKI, ROBLAN, STEINER HAYWARD, WAGNER

CHAPTER

AN ACT

Relating to collective bargaining; creating new provisions; amending ORS 243.650, 243.656, 243.666, 243.670, 243.672, 243.676, 243.726, 243.742, 243.762, 243.772, 243.782 and 652.610; and repealing ORS 243.776 and 292.055.

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

SECTION 1. Sections 2 to 6 of this 2019 Act are added to and made a part of ORS 243.650 to 243.782.

SECTION 2. As used in sections 2 to 6 of this 2019 Act:

(1) "Designated representative" means a public employee:

(a) Who is designated by the exclusive representative as a representative for the employees in a bargaining unit; and

(b) For whom:

(A) Reasonable paid time is granted under section 3 of this 2019 Act; or

(B) Release time is granted under section 4 of this 2019 Act.

(2) "Release time" means the period of time when a public employee who is a designated representative takes a leave of absence from the employee's regular public employment to conduct labor organization business.

(3) "Retirement credit" has the meaning given that term in ORS 238.005.

SECTION 3. (1) A public employer shall grant public employees who are designated representatives reasonable time to engage in the following activities during the public employee's regularly scheduled work hours without loss of compensation, seniority, leave accrual or any other benefits:

(a) Investigate and process grievances and other workplace-related complaints on behalf of the exclusive representative;

(b) Attend investigatory meetings and due process hearings involving represented employees;

(c) Participate in or prepare for proceedings under ORS 243.650 to 243.782, or that arise from a dispute involving a collective bargaining agreement, including arbitration proceedings, administrative hearings and proceedings before the Employment Relations Board;

(d) Act as a representative of the exclusive representative for employees within the bargaining unit for purposes of collective bargaining;

(e) Attend labor-management meetings held by a committee composed of employers, employees and representatives of the labor organization to discuss employment relations matters;

(f) Provide information regarding a collective bargaining agreement to newly hired employees at employee orientations or at any other meetings that may be arranged for new employees;

(g) Testify in a legal proceeding in which the public employee has been subpoenaed as a witness; and

(h) Perform any other duties agreed upon by a public employer and an exclusive representative in a collective bargaining agreement or any other agreement.

(2) A public employer may not reduce a public employee's work hours in order to comply with subsection (1) of this section except to prevent an employee from working unauthorized overtime hours.

SECTION 4. (1) Except as otherwise provided under this section, a public employer and an exclusive representative may negotiate and enter into written agreements whereby:

(a) The public employer shall provide a reasonable term of release time for public employees to serve as designated representatives of the exclusive representative or an affiliated labor organization.

(b) The public employer and the exclusive representative may agree to:

(A) The manner in which an exclusive representative shall request authorization for release time;

(B) The length of release time; and

(C) The terms of reimbursement for the period of release time granted to the public employee to serve as the designated representative.

(2) An agreement entered into under subsection (1) of this section does not constitute a violation of ORS 243.670 or 243.672 (1)(b).

(3) Upon request of an exclusive representative, a collective bargaining agreement or other similar written agreement entered into between a public employer and the exclusive representative before the effective date of this 2019 Act shall be reopened for negotiation regarding the authorization of release time under this section.

(4) At the conclusion or termination of a period of release time granted to a designated representative under this section, the designated representative shall have a right of reinstatement to the same position and work location held prior to the commencement of the release time or, if not feasible, to a substantially similar position without loss of seniority, rank or classification.

(5) Unless otherwise provided in a collective bargaining agreement or any other written agreement entered into between a public employer and an exclusive representative, the exclusive representative shall reimburse the public employer for any compensation that is paid to the designated representative during a period of release time. Compensation paid under this subsection includes any employer contributions made toward any employee benefits, including benefits under ORS chapter 238A.

(6) A designated representative taking release time under this section shall receive full retirement credit for the entire duration of the release time, as long as the designated representative continues to meet any retirement contribution obligations pursuant to ORS chapter 238 or pursuant to the collective bargaining agreement or any other written agreement entered into between the public employer and the exclusive representative.

(7) Any release time authorized under this section shall be in addition to any vacation leave, sick leave or any other form of paid or unpaid leave that is available to a public employee under state law or under a collective bargaining agreement or any other written agreement entered into between the public employer and the exclusive representative.

(8) An exclusive representative or a designated representative may terminate a period of release time authorized under this section at any time for any reason.

(9)(a) A public employer is not liable for an act or omission of, or an injury suffered by, an employee of the public employer if the act, omission or injury occurs during the course and scope of the employee serving as a designated representative for the exclusive representative during a period of release time.

(b) If the public employer is held liable, the exclusive representative shall indemnify the employer and hold the employer harmless from all liability arising from the act, omission or injury that occurred during the period of release time.

(10) Agreements entered into under this section shall not be deemed an unfair labor practice under ORS 243.672.

SECTION 5. (1)(a) A public employer shall provide an exclusive representative of an appropriate bargaining unit reasonable access to employees within the bargaining unit.

(b) For purposes of newly hired employees in the bargaining unit, reasonable access includes, but is not limited to:

(A) The right to meet with new employees, without loss of employee compensation or leave benefits; and

(B) The right to meet with the new employees within 30 calendar days from the date of hire for a period of at least 30 minutes but not more than 120 minutes, during new employee orientation or, if the public employer does not conduct new employee orientations, at individual or group meetings.

(c) For purposes of employees in the bargaining unit who are not new employees, reasonable access includes, but is not limited to:

(A) The right to meet with employees during the employees' regular work hours at the employees' regular work location to investigate and discuss grievances, workplace-related complaints and other matters relating to employment relations; and

(B) The right to conduct meetings at the employees' regular work location before or after the employees' regular work hours, during meal periods and during any other break periods.

(2) A public employer shall permit an exclusive representative to use the public employer's facilities or property, whether owned or leased by the employer, for purposes of conducting meetings with the represented employees in the bargaining unit.

(3)(a) An exclusive representative may hold the meetings described under subsection (1) of this section at a time and place set by the exclusive representative, provided that the meetings do not interfere with the employer's operations.

(b) The exclusive representative shall have the right to conduct the meetings without undue interference and may establish reasonable rules regarding appropriate conduct for meeting attendees.

(4)(a) If a public employer has the information in the employer's records, the public employer shall provide to the exclusive representative, in an editable digital file format agreed to by the exclusive representative, the following information for each employee in an appropriate bargaining unit:

(A) The employee's name and date of hire;

(B) Contact information including:

(i) Cellular, home and work telephone numbers;

(ii) Any means of electronic communication, including work and personal electronic mail addresses; and

(iii) Home address or personal mailing address; and

(C) Employment information, including the employee's job title, salary and work site location.

(b) The public employer shall provide the information described in paragraph (a) of this subsection to the exclusive representative:

(A) Within 10 calendar days from the date of hire for newly hired employees in an appropriate bargaining unit; and

(B) Every 120 calendar days for employees in the bargaining unit who are not newly hired employees.

(5) An exclusive representative shall have the right to use the electronic mail systems or other similar communication systems of a public employer to communicate with the employees in the bargaining unit regarding:

(a) Collective bargaining, including the administration of collective bargaining agreements;

(b) The investigation of grievances or other disputes relating to employment relations; and

(c) Matters involving the governance or business of the labor organization.

(6) Nothing in this section:

(a) Prevents a public employer from providing an exclusive representative access to employees within the bargaining unit beyond the reasonable access required under this section.

(b) Limits any existing right of a labor organization to communicate with public employees.

SECTION 6. (1) A public employee may enter into an agreement with a labor organization that is the exclusive representative to provide authorization for a public employer to make a deduction from the salary or wages of the public employee, in the manner described in subsection (4) of this section, to pay dues, fees and any other assessments or authorized deductions to the labor organization or its affiliated organizations or entities.

(2) A public employer shall deduct the dues, fees and any other deduction authorized by a public employee under this section and remit payment to the designated organization or entity.

(3)(a) In addition to making the deductions and payments to a labor organization or entity described in subsection (1) of this section, a public employer shall make deductions for and payments to a noncertified, yet bona fide, labor organization, if so requested and authorized by a public employee, in the manner described in subsection (4) of this section.

(b) The deductions and payments made in accordance with this subsection shall not be deemed an unfair labor practice under ORS 243.672.

(4)(a) A public employee may provide authorization for the deductions described in this section by telephonic communication or in writing, including by an electronic record or electronic signature, as those terms are defined in ORS 84.004.

(b) A public employee's authorization is independent of the employee's membership status in the labor organization to which payment is remitted and irrespective of whether a collective bargaining agreement authorizes the deduction.

(5) Notwithstanding subsections (1) to (4) of this section, a collective bargaining agreement between a labor organization and a public employer may authorize a public employer to make a deduction from the salary or wages of a public employee who is a member of the labor organization to pay dues, fees or other assessments to the labor organization or its affiliated organizations or entities.

(6) A public employee's authorization for a public employer to make a deduction under subsections (1) to (4) of this section shall remain in effect until the public employee revokes the authorization in the manner provided by the terms of the agreement. If the terms of the agreement do not specify the manner in which a public employee may revoke the authorized deduction, a public employee may revoke authorization for the deduction by delivering an original signed, written statement of revocation to the headquarters of the labor organization.

(7) A labor organization shall provide to each public employer a list identifying the public employees who have provided authorization for a public employer to make deductions from the public employee's salary or wages to pay dues, fees and any other assessments or authorized deductions to the labor organization. A public employer shall rely on the list to make the authorized deductions and to remit payment to the labor organization.

(8)(a) Notwithstanding subsection (10) of this section, a public employer that makes deductions and payments in reliance on the list described in subsection (7) of this section is not liable to a public employee for actual damages resulting from an unauthorized deduction.

(b) A labor organization that receives payment from a public employer shall defend and indemnify the public employer for the amount of any unauthorized deduction resulting from the public employer's reliance on the list.

(9) If a labor organization provides a public employer with the list described in subsection (7) of this section and the employer fails to make an authorized deduction and remit payment to the labor organization, the public employer is liable to the labor organization, without recourse against the employee who authorized the deduction, for the full amount that the employer failed to deduct and remit to the labor organization.

(10)(a) If a dispute arises between the public employee and the labor organization regarding the existence, validity or revocation of an authorization for the deductions and payment described under subsections (1) and (2) of this section, the dispute shall be resolved through an unfair labor practice proceeding under ORS 243.672.

(b) A public employer that makes unauthorized deductions or a labor organization that receives payment in violation of the requirements of this section is liable to the public employee for actual damages in an amount not to exceed the amount of the unauthorized deductions.

SECTION 7. ORS 243.650 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(f) For employee bargaining involving employees covered by ORS 243.736 and employees of the Department of Corrections who have direct contact with inmates, "employment relations" includes safety issues that have an impact on the on-the-job safety of the employees or staffing levels that have a significant impact on the on-the-job safety of the employees.

(g) For all other employee bargaining except school district bargaining and except as provided in paragraph (f) of this subsection, "employment relations" excludes staffing levels and safety issues (except those staffing levels and safety issues that have a direct and substantial effect on the on-the-job safety of public employees), scheduling of services provided to the public, determination of the minimum qualifications necessary for any position, criteria for evaluation or performance appraisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress, grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar matters of personal conduct at work, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

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

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

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

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

(12) "Labor dispute" means any controversy concerning employment relations or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to

arrange terms or conditions of employment relations, regardless of whether the disputants stand in the proximate relation of employer and employee.

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

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

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

(16) "Managerial employee" means an employee of the State of Oregon or a public university listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or who represents management's interest by taking or effectively recommending discretionary actions that control or implement employer policy, and who has discretion in the performance of these management responsibilities beyond the routine discharge of duties. A "managerial employee" need not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection, "managerial employee" does not include faculty members at a community college, college or university.

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

(18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclusive representative in negotiations and contract administration of all persons in an appropriate bargaining unit who are not members of the organization serving as exclusive representative of the employees. The payment must be equivalent to regular union dues and assessments, if any, or must be an amount agreed upon by the public employer and the exclusive representative of the employees.

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

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

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

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

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

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

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

(B) Is employed in an administrative position without a reasonable expectation of teaching, research or other scholarly accomplishments.

(c) "Supervisory employee" does not include:

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

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

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

(24) "Unfair labor practice" means the commission of an act designated an unfair labor practice in ORS 243.672.

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

SECTION 8. ORS 243.656 is amended to read:

243.656. The Legislative Assembly finds and declares that:

(1) The people of this state have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees;

(2) Recognition by public employers of the right of public employees to organize and full acceptance of the principle and procedure of collective negotiation between public employers and public employee organizations can alleviate various forms of strife and unrest. Experience in the private and public sectors of our economy has proved that unresolved disputes in the public service are injurious to the public, the governmental agencies, and public employees;

(3) Experience in private and public employment has also proved that protection by law of the right of employees to organize and negotiate collectively safeguards employees and the public from injury, impairment and interruptions of necessary services, and removes certain recognized sources of strife and unrest, by encouraging practices fundamental to the peaceful adjustment of disputes arising out of differences as to wages, hours, terms and other working conditions, and by establishing greater equality of bargaining power between public employers and public employees;

(4) The state has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted operations and functions of government; *[and]*

(5) It is in the public interest to ensure that exclusive representatives of public employees are able to effectively carry out their statutory duties by having direct access to represented employees, including communicating with the employees at the workplace or otherwise;

[(5)] (6) It is the purpose of ORS 243.650 to 243.782 to obligate public employers, public employees and their representatives to enter into collective negotiations with willingness to resolve grievances and disputes relating to employment relations and to enter into written and signed contracts evidencing agreements resulting from such negotiations. It is also the purpose of ORS 243.650 to 243.782 to promote the improvement of employer-employee relations within the various public employers by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, and to be represented by such organizations in their employment relations with public employers*[,]*; **and**

(7) Ensuring meaningful communication between labor organizations and employees increases the effectiveness of public employees' work performance.

SECTION 9. ORS 243.666 is amended to read:

243.666. (1) A labor organization certified by the Employment Relations Board or recognized by the public employer is the exclusive representative of the employees of a public employer for the purposes of collective bargaining with respect to employment relations. *[Nevertheless any agreements entered into involving union security including an all-union agreement or agency shop agreement must*

safeguard the rights of nonassociation of employees, based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular union dues and initiation fees and assessments, if any, to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the representative of the labor organization to which such employee would otherwise be required to pay dues. The employee shall furnish written proof to the employer of the employee that this has been done.]

(2) Notwithstanding the provisions of subsection (1) of this section, an individual employee or group of employees at any time may present grievances to their employer and have such grievances adjusted, without the intervention of the labor organization, if:

(a) The adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect; and

(b) The labor organization has been given opportunity to be present at the adjustment.

(3) Nothing in this section prevents a public employer from recognizing a labor organization which represents at least a majority of employees as the exclusive representative of the employees of a public employer when the board has not designated the appropriate bargaining unit or when the board has not certified an exclusive representative in accordance with ORS 243.686.

SECTION 10. ORS 243.670 is amended to read:

243.670. (1) As used in this section:

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

(A) Whether to support or oppose a labor organization that represents or seeks to represent those employees; or

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

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

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

(2) A public employer may not:

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

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

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

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

(a) Addressing a grievance or negotiating or administering a collective bargaining agreement.

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

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

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

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

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

(b) Nothing in this section prohibits a public employer from spending public funds for the purpose of:

(A) Representing the public employer in a proceeding before the board or in a judicial review of that proceeding[.];

(B) Granting paid release time under section 4 of this 2019 Act; or

(C) Providing paid excused time to public employees who engage in the activities described under section 3 of this 2019 Act.

SECTION 11. ORS 243.672 is amended to read:

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

(a) Interfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.

(b) Dominate, interfere with or assist in the formation, existence or administration of any employee organization.

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

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

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

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

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

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

(i) Violate ORS 243.670 (2).

(j) Attempt to influence an employee to resign from or decline to obtain membership in a labor organization.

(k) Encourage an employee to revoke an authorization for the deductions described under section 6 of this 2019 Act.

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

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

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

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

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

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

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

(g) For a labor organization or its agents to picket or cause, induce, or encourage to be picketed, or threaten to engage in such activity, at the residence or business premises of any individual who is a member of the governing body of a public employer, with respect to a dispute over

a collective bargaining agreement or negotiations over employment relations, if an objective or effect of such picketing is to induce another person to cease doing business with the governing body member's business or to cease handling, transporting or dealing in goods or services produced at the governing body's business. For purposes of this paragraph, a member of the Legislative Assembly is a member of the governing body of a public employer when the collective bargaining negotiation or dispute is between the State of Oregon and a labor organization. The Governor and other state-wide elected officials are not considered members of a governing body for purposes of this paragraph. Nothing in this paragraph may be interpreted or applied in a manner that violates the right of free speech and assembly as protected by the Constitution of the United States or the Constitution of the State of Oregon.

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

SECTION 12. ORS 243.676 is amended to read:

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

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

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

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

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

(a) State its findings of fact;

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

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

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

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

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

(a) Issue an order dismissing the complaint; and

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

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

(A) The complaint has been affirmed pursuant to subsection (2) of this section and the board finds that the person who has committed, or who is engaging, in an unfair labor practice has done

so repetitively, knowing that the action taken was an unfair labor practice and took the action disregarding this knowledge, or that the action constituting the unfair labor practice was egregious; or

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

(b) Notwithstanding paragraph (a) of this subsection, if the board finds that a public employer named in the complaint violated ORS 243.670 (2), the board shall impose a civil penalty equal to triple the amount of funds the public employer expended to assist, promote or deter union organizing.

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

SECTION 13. ORS 243.726 is amended to read:

243.726. (1) Participation in a strike shall be unlawful for any public employee who is not included in an appropriate bargaining unit for which an exclusive representative has been certified by the Employment Relations Board or recognized by the employer; or is included in an appropriate bargaining unit that provides for resolution of a labor dispute by petition to final and binding arbitration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782[, 292.055] and 341.290.

(2) It shall be lawful for a public employee who is not prohibited from striking under subsection (1) of this section and who is in the appropriate bargaining unit involved in a labor dispute to participate in a strike over mandatory subjects of bargaining provided:

(a) The requirements of ORS 243.712 and 243.722 relating to the resolution of labor disputes have been complied with in good faith;

(b) Thirty days have elapsed since the board has made public the fact finder's findings of fact and recommendations or the mediator has made public the parties' final offers;

(c) The exclusive representative has given 10 days' notice by certified mail of its intent to strike and stating the reasons for its intent to strike to the board and the public employer;

(d) The collective bargaining agreement has expired, or the labor dispute arises pursuant to a reopener provision in a collective bargaining agreement or renegotiation under ORS 243.702 (1) or renegotiation under ORS 243.698; and

(e) The union's strike does not include unconventional strike activity not protected under the National Labor Relations Act on June 6, 1995, and does not constitute an unfair labor practice under ORS 243.672 (2)(f).

(3)(a) Where the strike occurring or is about to occur creates a clear and present danger or threat to the health, safety or welfare of the public, the public employer concerned may petition the circuit court of the county in which the strike has taken place or is to take place for equitable relief including but not limited to appropriate injunctive relief.

(b) If the strike is a strike of state employees the petition shall be filed in the Circuit Court of Marion County.

(c) If, after hearing, the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public, it shall grant appropriate relief. Such relief shall include an order that the labor dispute be submitted to final and binding arbitration within 10 days of the court's order pursuant to procedures in ORS 243.746.

(4)(a) A labor organization may not declare or authorize a strike of public employees that is or would be in violation of this section. When it is alleged in good faith by the public employer that a labor organization has declared or authorized a strike of public employees that is or would be in violation of this section, the employer may petition the board for a declaration that the strike is or would be unlawful. The board, after conducting an investigation and hearing, may make such declaration if it finds that such declaration or authorization of a strike is or would be unlawful.

(b) When a labor organization or individual disobeys an order of the appropriate circuit court issued pursuant to enforcing an order of the board involving this section and ORS 243.736 or

243.738, they shall be punished according to the provisions of ORS 33.015 to 33.155, except that the amount of the fine shall be at the discretion of the court.

(5) An unfair labor practice by a public employer shall not be a defense to a prohibited strike. The board upon the filing of an unfair labor charge alleging that a public employer has committed an unfair labor practice during or arising out of the collective bargaining procedures set forth in ORS 243.712 and 243.722, shall take immediate action on such charge and if required, petition the court of competent jurisdiction for appropriate relief or a restraining order.

(6) As used in this section, "danger or threat to the health, safety or welfare of the public" does not include an economic or financial inconvenience to the public or to the public employer that is normally incident to a strike by public employees.

SECTION 14. ORS 243.742 is amended to read:

243.742. (1) It is the public policy of the State of Oregon that where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of labor disputes and to that end the provisions of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782[, 292.055] and 341.290, providing for compulsory arbitration, shall be liberally construed.

(2) When the procedures set forth in ORS 243.712 and 243.722, relating to mediation of a labor dispute, have not culminated in a signed agreement between the parties who are prohibited from striking, the public employer and exclusive representative of its employees shall include with the final offer filed with the mediator a petition to the Employment Relations Board in writing that initiates binding arbitration for bargaining units with employees referred to in ORS 243.736 or 243.738. Arbitration shall be scheduled by mutual agreement not earlier than 30 days following the submission of the final offer packages to the mediator. Arbitration shall be scheduled in accordance with the procedures prescribed in ORS 243.746.

SECTION 15. ORS 652.610 is amended to read:

652.610. (1)(a) All persons, firms, partnerships, associations, cooperative associations, corporations, municipal corporations, the state and its political subdivisions, except the federal government and its agencies, employing, in this state, during any calendar month one or more persons, shall provide the employee on regular paydays and at other times payment of wages, salary or commission is made, with an itemized statement as described in paragraph (b) of this subsection.

(b) The statement required under this subsection must be a written statement, sufficiently itemized to show:

- (A) The date of the payment;
- (B) The dates of work covered by the payment;
- (C) The name of the employee;
- (D) The name and business registry number or business identification number;
- (E) The address and telephone number of the employer;
- (F) The rate or rates of pay;
- (G) Whether the employee is paid by the hour, shift, day or week or on a salary, piece or commission basis;
- (H) Gross wages;
- (I) Net wages;
- (J) The amount and purpose of each deduction made during the respective period of service that the payment covers;
- (K) Allowances, if any, claimed as part of minimum wage;
- (L) Unless the employee is paid on a salary basis and is exempt from overtime compensation as established by local, state or federal law, the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked and pay for those hours, and the number of overtime hours worked and pay for those hours; and
- (M) If the employee is paid a piece rate, the applicable piece rate or rates of pay, the number of pieces completed at each piece rate and the total pay for each rate.

(c) Notwithstanding paragraph (b) of this subsection, the employer may provide the statement required under this subsection to the employee in electronic form pursuant to ORS 84.001 to 84.061 if:

- (A) The statement contains the information described in paragraph (b) of this section;
- (B) The employee expressly agrees to receive the statement in electronic form; and
- (C) The employee has the ability to print or store the statement at the time of receipt.

(2)(a) The statement may be attached to or be a part of the check, draft, voucher or other instrument by which payment is made, or may be delivered separately from the instrument.

(b) The statement shall be provided electronically at the time payment is made to all state officers and employees paid electronically under the state payroll system as provided by ORS 292.026.

(c) State agencies shall provide access to electronic statements to employees who do not have regular access to computers in their workplace.

(d) Notwithstanding paragraph (b) of this subsection, if an officer or employee paid under the state payroll system as provided by ORS 292.026 wants to receive payment of net salary and wages by check or to receive a paper statement of itemized payroll deductions, the officer or employee shall request paper statements or payment by check in accordance with the procedures adopted by rule by the Oregon Department of Administrative Services.

(3) An employer may not withhold, deduct or divert any portion of an employee's wages unless:

(a) The employer is required to do so by law;

(b) The deductions are voluntarily authorized in writing by the employee, are for the employee's benefit and are recorded in the employer's books;

(c) The employee has voluntarily signed an authorization for a deduction for any other item, provided that the ultimate recipient of the money withheld is not the employer and that the deduction is recorded in the employer's books;

(d) The deduction is authorized by a collective bargaining agreement to which the employer is a party;

(e) The deduction is authorized under ORS 18.736; or

(f) The deduction is made from the payment of wages upon termination of employment and is authorized pursuant to a written agreement between the employee and employer for the repayment of a loan made to the employee by the employer, if all of the following conditions are met:

(A) The employee has voluntarily signed the agreement;

(B) The loan was paid to the employee in cash or other medium permitted by ORS 652.110;

(C) The loan was made solely for the employee's benefit and was not used, either directly or indirectly, for any purpose required by the employer or connected with the employee's employment with the employer;

(D) The amount of the deduction at termination of employment does not exceed the amount permitted to be garnished under ORS 18.385; and

(E) The deduction is recorded in the employer's books.

(4) When an employer deducts an amount from an employee's wages as required or authorized by law or agreement, the employer shall pay the amount deducted to the appropriate recipient as required by the law or agreement. The employer shall pay the amount deducted within the time required by the law or the agreement or, if the time for payment is not specified by the law or agreement, within seven days after the date the wages from which the deductions are made are due. Failure to pay the amount as required constitutes an unlawful deduction.

(5) This section does not:

(a) Prohibit the withholding of amounts authorized in writing by the employee to be contributed by the employee to charitable organizations, including contributions made pursuant to ORS [243.666 and] 663.110;

(b) Prohibit deductions by checkoff dues to labor organizations or service fees when the deductions are not otherwise prohibited by law; or

(c) Diminish or enlarge the right of any person to assert and enforce a lawful setoff or counterclaim or to attach, take, reach or apply an employee's compensation on due legal process.

SECTION 16. ORS 243.762 is amended to read:

243.762. Nothing in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782[, 292.055] and 341.290 is intended to prohibit a public employer and the exclusive representative of its employees from entering into a collective bargaining agreement which provides for a compulsory arbitration procedure which is substantially equivalent to ORS 243.742 to 243.756.

SECTION 17. ORS 243.772 is amended to read:

243.772. Any provisions of local charters and ordinances adopted pursuant thereto in existence on October 5, 1973, and not in conflict with the rights and duties established in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782[, 292.055] and 341.290 may remain in full force and effect after the Employment Relations Board has determined that no conflict exists.

SECTION 18. ORS 243.782 is amended to read:

243.782. (1) For purposes of proceedings commenced pursuant to ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782[, 292.055] and 341.290, a person may be represented by counsel or any other agent authorized by such person.

(2) As used in subsection (1) of this section, "person" means any individual, a labor organization or a public employer.

SECTION 19. ORS 243.776 and 292.055 are repealed.

Passed by House March 27, 2019

Received by Governor:

Repassed by House June 11, 2019

.....M.,....., 2019

Approved:

.....
Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2019

.....
Tina Kotek, Speaker of House

.....
Kate Brown, Governor

Passed by Senate June 6, 2019

Filed in Office of Secretary of State:

.....M.,....., 2019

.....
Peter Courtney, President of Senate

.....
Bev Clarno, Secretary of State