

Minority Report
A-Engrossed
House Bill 2016

Ordered by the House March 25
Including House Minority Report Amendments dated March 25

Sponsored by nonconcurring members of the House Committee on Business and Labor: Representatives BARRETO, BONHAM

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Requires public employer to grant reasonable paid time to public employee who is designated representative to engage in certain activities.]

[Requires public employer, upon request by exclusive representative, to authorize release time to designated representative of exclusive representative. Authorizes public employer and exclusive representative to negotiate and enter into agreements regarding release time. Entitles designated representative to be restored to same position after conclusion of release time.]

[Requires public employer to provide exclusive representative reasonable access to employees in appropriate bargaining unit. Requires employers to provide employee contact information to exclusive representative within certain time limits.]

[Permits public employer to deduct dues, fees and assessments from salary and wages of public employee who has authorized deduction. Requires employer to pay amounts deducted to labor organization.]

[Expands definition of "employment relations" to include labor organization access to represented employees.]

[Makes use of public employer's electronic mail for certain activities related to authorization of deduction for payment to labor organization, employer attempts to influence employee to resign from or decline membership in labor organization, employer's encouragement of employee to revoke authorization for deduction for payment to labor organization and provision of certain personally identifiable information about public employees within bargaining unit to entity other than exclusive representative unfair labor practices.]

Prohibits public employer from requiring that public employee become or remain member of labor organization or pay dues, fees or other amounts in lieu of dues to labor organization as condition for employment or continuation of employment. Makes agreement that has purpose or effect of requiring employee to agree to such requirements void and unenforceable. Requires district attorney of each county and Attorney General to investigate and prosecute complaints of violation of prohibition of such requirements.

Prohibits public employer from entering into union security agreement that requires mandatory labor organization dues or membership.

A BILL FOR AN ACT

Relating to collective bargaining; creating new provisions; and amending ORS 243.650, 243.666 and 652.610.

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

SECTION 1. Sections 2 to 5 of this 2019 Act are added to and made a part of ORS 243.650 to 243.782.

SECTION 2. The Legislative Assembly finds that:

(1) An individual should have the freedom of choice to become or remain a member of a labor organization; and

(2) An individual should not be required to pay member dues, fees or any other assess-

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **ments to a labor organization as a condition of employment.**

2 **SECTION 3. (1) A public employer in this state may not, as a condition for employment**
3 **or continuation of employment, require a public employee to be a member of or make pay-**
4 **ment to a labor organization for any reason.**

5 **(2) Any agreement, understanding or practice, written or oral, implied or expressed, be-**
6 **tween a public employee and a public employer that has the purpose or effect of requiring**
7 **the employee to agree to any of the following is unlawful, void and unenforceable:**

8 **(a) Becoming a member of a labor organization.**

9 **(b) Paying dues, fees or any other assessments to a labor organization.**

10 **(c) Deducting from the salary or wages of a public employee any amount for payment to**
11 **a labor organization unless the employee has voluntarily requested in writing a deduction of**
12 **an amount for payment to a labor organization.**

13 **(d) Paying to any third party any amounts in lieu of or the equivalent to a pro rata por-**
14 **tion of dues, fees or other assessments required of members of a labor organization.**

15 **SECTION 4. The district attorney of each county and the Attorney General must inves-**
16 **tigate complaints of violation or threatened violation of section 3 of this 2019 Act and pros-**
17 **ecute all persons violating section 3 of this 2019 Act and take all means at the command of**
18 **the district attorney or Attorney General to ensure the effective enforcement of section 3**
19 **of this 2019 Act.**

20 **SECTION 5. (1) An individual harmed as a result of any violation or threatened violation**
21 **of section 3 of this 2019 Act is entitled to injunctive relief against any and all persons**
22 **threatening or committing the violation and may recover any damages, including costs and**
23 **reasonable attorney fees, resulting from the violation or threatened violation.**

24 **(2) The remedies available under subsection (1) of this section are independent of and in**
25 **addition to the penalties and remedies prescribed in ORS 243.650 to 243.782.**

26 **SECTION 6. ORS 243.650 is amended to read:**

27 243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

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

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

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

38 (4) "Collective bargaining" means the performance of the mutual obligation of a public employer
39 and the representative of its employees to meet at reasonable times and confer in good faith with
40 respect to employment relations for the purpose of negotiations concerning mandatory subjects of
41 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute
42 concerning the interpretation or application of a collective bargaining agreement, and to execute
43 written contracts incorporating agreements that have been reached on behalf of the public employer
44 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and
45 negotiate does not compel either party to agree to a proposal or require the making of a concession.

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

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

7 (6) "Confidential employee" means one who assists and acts in a confidential capacity to a per-
8 son who formulates, determines and effectuates management policies in the area of collective bar-
9 gaining.

10 (7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indi-
11 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of
12 employment.

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

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

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

20 (e) For school district bargaining, "employment relations" excludes class size, the school or ed-
21 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
22 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
23 gum chewing and similar matters of personal conduct, the standards and procedures for student
24 discipline, the time between student classes, the selection, agendas and decisions of 21st Century
25 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
26 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this
27 subsection.

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

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

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

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

1 make recommendations for settlement of the dispute.

2 (10) "Fair-share agreement" means an agreement between the public employer and the recog-
3 nized or certified bargaining representative of public employees whereby employees who are not
4 members of the employee organization *[are required]* **may voluntarily consent** to make an in-lieu-
5 of-dues payment to an employee organization. *[except as provided in ORS 243.666. Upon the filing*
6 *with the board of a petition by 30 percent or more of the employees in an appropriate bargaining unit*
7 *covered by such union security agreement declaring they desire that the agreement be rescinded, the*
8 *board shall take a secret ballot of the employees in the unit and certify the results thereof to the re-*
9 *cognized or certified bargaining representative and to the public employer. Unless a majority of the*
10 *votes cast in an election favor the union security agreement, the board shall certify deauthorization of*
11 *the agreement. A petition for deauthorization of a union security agreement must be filed not more than*
12 *90 calendar days after the collective bargaining agreement is executed. Only one such election may be*
13 *conducted in any appropriate bargaining unit during the term of a collective bargaining agreement*
14 *between a public employer and the recognized or certified bargaining representative.]*

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

17 (12) "Labor dispute" means any controversy concerning employment relations or concerning the
18 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to
19 arrange terms or conditions of employment relations, regardless of whether the disputants stand in
20 the proximate relation of employer and employee.

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

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

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

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

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

37 (18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclu-
38 sive representative in negotiations and contract administration of all *[persons]* **public employees** in
39 an appropriate bargaining unit who are not members of the organization serving as exclusive rep-
40 resentative of the employees. The payment *[must]* **may** be equivalent to regular union dues and as-
41 sessments, if any, or *[must]* **may** be an amount agreed upon by the public employer and the exclusive
42 representative of the employees.

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

1 visory employees or managerial employees.

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

6 (21) "Public employer representative" includes any individual or individuals specifically desig-
7 nated by the public employer to act in its interests in all matters dealing with employee represen-
8 tation, collective bargaining and related issues.

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

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

24 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS
25 352.002 or the Oregon Health and Science University who:

26 (A) Is employed as a president, vice president, provost, vice provost, dean, associate dean, as-
27 sistant dean, head or equivalent position; or

28 (B) Is employed in an administrative position without a reasonable expectation of teaching, re-
29 search or other scholarly accomplishments.

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

31 (A) A nurse, charge nurse or nurse holding a similar position if that position has not tradi-
32 tionally been classified as supervisory;

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

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

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

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

42 **SECTION 7.** ORS 243.666 is amended to read:

43 243.666. (1) A labor organization certified by the Employment Relations Board or recognized by
44 the public employer is the exclusive representative of the employees of a public employer for the
45 purposes of collective bargaining with respect to employment relations. *[Nevertheless any agreements*

1 entered into involving union security including an all-union agreement or agency shop agreement must
2 safeguard the rights of nonassociation of employees, based on bona fide religious tenets or teachings
3 of a church or religious body of which such employee is a member. Such employee shall pay an amount
4 of money equivalent to regular union dues and initiation fees and assessments, if any, to a nonreligious
5 charity or to another charitable organization mutually agreed upon by the employee affected and the
6 representative of the labor organization to which such employee would otherwise be required to pay
7 dues. The employee shall furnish written proof to the employer of the employee that this has been
8 done.]

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

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

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

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

19 **SECTION 8.** ORS 652.610 is amended to read:

20 652.610. (1)(a) All persons, firms, partnerships, associations, cooperative associations, corpo-
21 rations, municipal corporations, the state and its political subdivisions, except the federal govern-
22 ment and its agencies, employing, in this state, during any calendar month one or more persons,
23 shall provide the employee on regular paydays and at other times payment of wages, salary or
24 commission is made, with an itemized statement as described in paragraph (b) of this subsection.

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

27 (A) The date of the payment;

28 (B) The dates of work covered by the payment;

29 (C) The name of the employee;

30 (D) The name and business registry number or business identification number;

31 (E) The address and telephone number of the employer;

32 (F) The rate or rates of pay;

33 (G) Whether the employee is paid by the hour, shift, day or week or on a salary, piece or com-
34 mission basis;

35 (H) Gross wages;

36 (I) Net wages;

37 (J) The amount and purpose of each deduction made during the respective period of service that
38 the payment covers;

39 (K) Allowances, if any, claimed as part of minimum wage;

40 (L) Unless the employee is paid on a salary basis and is exempt from overtime compensation as
41 established by local, state or federal law, the regular hourly rate or rates of pay, the overtime rate
42 or rates of pay, the number of regular hours worked and pay for those hours, and the number of
43 overtime hours worked and pay for those hours; and

44 (M) If the employee is paid a piece rate, the applicable piece rate or rates of pay, the number
45 of pieces completed at each piece rate and the total pay for each rate.

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

4 (A) The statement contains the information described in paragraph (b) of this section;

5 (B) The employee expressly agrees to receive the statement in electronic form; and

6 (C) The employee has the ability to print or store the statement at the time of receipt.

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

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

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

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

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

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

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

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

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

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

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

31 (A) The employee has voluntarily signed the agreement;

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

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

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

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

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

45 (5) This section does not:

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

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

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

8 **SECTION 9. Section 3 of this 2019 Act and the amendments to ORS 243.650, 243.666 and**
9 **652.610 by sections 6 to 8 of this 2019 Act apply to collective bargaining agreements entered**
10 **into or renewed on or after the effective date of this 2019 Act.**

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