

House Bill 2276

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Employment Relations Board)

SUMMARY

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

Removes authority of public employer and labor organization to enter into fair-share agreement. Removes authority of public employer to deduct in-lieu-of-dues payment from salary or wages of public employee.

A BILL FOR AN ACT

1
2 Relating to mandatory payments to labor organizations by public employees; amending ORS 243.650,
3 243.666, 243.672, 243.676, 243.682, 243.726, 292.055, 329A.430, 410.614, 443.733 and 652.610.

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

5 **SECTION 1.** ORS 243.650 is amended to read:

6 243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

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

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

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

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

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

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

4 (7)(a) “Employment relations” includes, but is not limited to, matters concerning direct or indi-
5 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of
6 employment.

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

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

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

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

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

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

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

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

41 [(10) “Fair-share agreement” means an agreement between the public employer and the recognized
42 or certified bargaining representative of public employees whereby employees who are not members of
43 the employee organization are required to make an in-lieu-of-dues payment to an employee organization
44 except as provided in ORS 243.666. Upon the filing with the board of a petition by 30 percent or more
45 of the employees in an appropriate bargaining unit covered by such union security agreement declaring

1 *they desire that the agreement be rescinded, the board shall take a secret ballot of the employees in the*
 2 *unit and certify the results thereof to the recognized or certified bargaining representative and to the*
 3 *public employer. Unless a majority of the votes cast in an election favor the union security agreement,*
 4 *the board shall certify deauthorization of the agreement. A petition for deauthorization of a union se-*
 5 *curity agreement must be filed not more than 90 calendar days after the collective bargaining agreement*
 6 *is executed. Only one such election may be conducted in any appropriate bargaining unit during the*
 7 *term of a collective bargaining agreement between a public employer and the recognized or certified*
 8 *bargaining representative.]*

9 [(11)] (10) “Final offer” means the proposed contract language and cost summary submitted to
 10 the mediator within seven days of the declaration of impasse.

11 [(12)] (11) “Labor dispute” means any controversy concerning employment relations or con-
 12 cerning the association or representation of persons in negotiating, fixing, maintaining, changing,
 13 or seeking to arrange terms or conditions of employment relations, regardless of whether the
 14 disputants stand in the proximate relation of employer and employee.

15 [(13)] (12) “Labor organization” means any organization that has as one of its purposes repre-
 16 senting employees in their employment relations with public employers.

17 [(14)] (13) “Last best offer package” means the offer exchanged by parties not less than 14 days
 18 prior to the date scheduled for an interest arbitration hearing.

19 [(15)] (14) “Legislative body” means the Legislative Assembly, the city council, the county
 20 commission and any other board or commission empowered to levy taxes.

21 [(16)] (15) “Managerial employee” means an employee of the State of Oregon or a public uni-
 22 versity listed in ORS 352.002 who possesses authority to formulate and carry out management deci-
 23 sions or who represents management’s interest by taking or effectively recommending discretionary
 24 actions that control or implement employer policy, and who has discretion in the performance of
 25 these management responsibilities beyond the routine discharge of duties. A “managerial
 26 employee” need not act in a supervisory capacity in relation to other employees. Notwithstanding
 27 this subsection, “managerial employee” does not include faculty members at a community college,
 28 college or university.

29 [(17)] (16) “Mediation” means assistance by an impartial third party in reconciling a labor dis-
 30 pute between the public employer and the exclusive representative regarding employment relations.

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

36 [(19)] (17) “Public employee” means an employee of a public employer but does not include
 37 elected officials, persons appointed to serve on boards or commissions, incarcerated persons working
 38 under [section 41,] Article I, **section 41**, of the Oregon Constitution, or persons who are confidential
 39 employees, supervisory employees or managerial employees.

40 [(20)] (18) “Public employer” means the State of Oregon, and the following political subdivisions:
 41 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
 42 politan service districts, public service corporations or municipal corporations and public and
 43 quasi-public corporations.

44 [(21)] (19) “Public employer representative” includes any individual or individuals specifically
 45 designated by the public employer to act in its interests in all matters dealing with employee rep-

1 representation, collective bargaining and related issues.

2 [(22)] (20) "Strike" means a public employee's refusal in concerted action with others to report
 3 for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or
 4 his or her absence in whole or in part from the full, faithful or proper performance of his or her
 5 duties of employment, for the purpose of inducing, influencing or coercing a change in the condi-
 6 tions, compensation, rights, privileges or obligations of public employment; however, nothing shall
 7 limit or impair the right of any public employee to lawfully express or communicate a complaint or
 8 opinion on any matter related to the conditions of employment.

9 [(23)(a)] (21)(a) "Supervisory employee" means any individual having authority in the interest
 10 of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or dis-
 11 cipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively
 12 to recommend such action, if in connection therewith, the exercise of the authority is not of a
 13 merely routine or clerical nature but requires the use of independent judgment. Failure to assert
 14 supervisory status in any Employment Relations Board proceeding or in negotiations for any col-
 15 lective bargaining agreement does not thereafter prevent assertion of supervisory status in any
 16 subsequent board proceeding or contract negotiation.

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

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

21 (B) Is employed in an administrative position without a reasonable expectation of teaching, re-
 22 search 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 position has not tradi-
 25 tionally been classified as supervisory;

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

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

31 [(24)] (22) "Unfair labor practice" means the commission of an act designated an unfair labor
 32 practice in ORS 243.672.

33 [(25)] (23) "Voluntary arbitration" means the procedure whereby parties involved in a labor
 34 dispute mutually agree to submit their differences to a third party for a final and binding decision.

35 **SECTION 2.** ORS 243.666 is amended to read:

36 243.666. (1) A labor organization certified by the Employment Relations Board or recognized by
 37 the public employer is the exclusive representative of the employees of a public employer for the
 38 purposes of collective bargaining with respect to employment relations. *[Nevertheless any agreements*
 39 *entered into involving union security including an all-union agreement or agency shop agreement must*
 40 *safeguard the rights of nonassociation of employees, based on bona fide religious tenets or teachings*
 41 *of a church or religious body of which such employee is a member. Such employee shall pay an amount*
 42 *of money equivalent to regular union dues and initiation fees and assessments, if any, to a nonreligious*
 43 *charity or to another charitable organization mutually agreed upon by the employee affected and the*
 44 *representative of the labor organization to which such employee would otherwise be required to pay*
 45 *dues. The employee shall furnish written proof to the employer of the employee that this has been*

1 *done.]*

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

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

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

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

12 **SECTION 3.** ORS 243.672 is amended to read:

13 243.672. (1) It is an unfair labor practice for a public employer or its designated representative
 14 to do any of the following:

15 (a) Interfere with, restrain or coerce employees in or because of the exercise of rights guaran-
 16 teed in ORS 243.662.

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

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

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

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

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

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

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

35 (i) Violate ORS 243.670 (2).

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

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

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

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

44 (d) Violate the provisions of any written contract with respect to employment relations, includ-
 45 ing an agreement to arbitrate or to accept the terms of an arbitration award, where previously the

1 parties have agreed to accept arbitration awards as final and binding upon them.

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

4 [(f)] (3) **It is an unfair labor practice** for any labor organization to engage in unconventional
 5 strike activity not protected for private sector employees under the National Labor Relations Act
 6 on June 6, 1995. This provision applies to sitdown, slowdown, rolling, intermittent or on-and-off again
 7 strikes.

8 [(g)] (4) **It is an unfair labor practice** for a labor organization or its agents to picket or cause,
 9 induce, or encourage to be picketed, or threaten to engage in such activity, at the residence or
 10 business premises of any individual who is a member of the governing body of a public employer,
 11 with respect to a dispute over a collective bargaining agreement or negotiations over employment
 12 relations, if an objective or effect of such picketing is to induce another person to cease doing
 13 business with the governing body member's business or to cease handling, transporting or dealing
 14 in goods or services produced at the governing body's business. For purposes of this [paragraph]
 15 **subsection**, a member of the Legislative Assembly is a member of the governing body of a public
 16 employer when the collective bargaining negotiation or dispute is between the State of Oregon and
 17 a labor organization. The Governor and other statewide elected officials are not considered members
 18 of a governing body for purposes of this [paragraph] **subsection**. Nothing in this [paragraph] **sub-**
 19 **section** may be interpreted or applied in a manner that violates the right of free speech and as-
 20 sembly as protected by the Constitution of the United States or the Constitution of the State of
 21 Oregon.

22 [(3)] (5) An injured party may file a written complaint with the Employment Relations Board
 23 not later than 180 days following the occurrence of an unfair labor practice. For each unfair labor
 24 practice complaint filed, a fee of \$300 is imposed. For each answer to an unfair labor practice
 25 complaint filed with the board, a fee of \$300 is imposed. The board may allow any other person to
 26 intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee
 27 of \$300 to the board. The board may, in its discretion, order fee reimbursement to the prevailing
 28 party in any case in which the complaint or answer is found to have been frivolous or filed in bad
 29 faith. The board shall deposit fees received under this section to the credit of the Employment Re-
 30 lations Board Administrative Account.

31 **SECTION 4.** ORS 292.055 is amended to read:

32 292.055. (1) Upon receipt of the request in writing of a state officer or employee so to do, the
 33 state official authorized to disburse funds in payment of the salary or wages of such state officer
 34 or employee each month shall deduct from the salary or wages of such officer or employee the
 35 amount of money indicated in such request, for payment thereof to a labor organization as the same
 36 is defined in ORS 243.650.

37 (2) Such state official each month shall pay such amount so deducted to any such labor organ-
 38 ization so designated to receive it.

39 (3) Unless there is a contract to the contrary, upon receipt of the request in writing of such
 40 officer or employee so to do, such state official shall cease making such deductions and payments.

41 (4) In addition to making such deductions and payments to any labor organization certified un-
 42 der the rules of the Employment Relations Board as representatives of employees in a bargaining
 43 unit, any department, board, commission, bureau, institution or other agency of the state shall make
 44 deductions for and payments to noncertified, yet bona fide, labor organizations, if requested to do
 45 so by officers and employees in that department, board, commission, bureau, institution, or other

1 state agency, and for so long as the requests are not revoked. No deductions for and payments to
 2 any labor organization under this section shall be deemed an unfair labor practice under ORS
 3 243.672.

4 *[(5) Upon receipt from the Oregon Department of Administrative Services of a copy of a valid*
 5 *fair-share agreement in a collective bargaining unit, the state official authorized to disburse funds in*
 6 *payment of the salary or wages of the employees in such unit each month shall deduct from the salary*
 7 *or wages of the employees covered by the agreement the in-lieu-of-dues payment stated in the agreement*
 8 *and pay such amount to the labor organization party the agreement in the same manner as deducted*
 9 *dues are paid to a labor organization. Such deduction and payment shall continue for the life of the*
 10 *agreement.]*

11 **SECTION 5.** ORS 243.676 is amended to read:

12 243.676. (1) Whenever a written complaint is filed alleging that any person has engaged in or is
 13 engaging in any unfair labor practice listed in ORS 243.672 (1) *[and (2)]* **to (4)** and 243.752, the
 14 Employment Relations Board or its agent shall:

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

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

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

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

26 (a) State its findings of fact;

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

29 (c) Take such affirmative action, including but not limited to the reinstatement of employees
 30 with or without back pay, as necessary to effectuate the purposes of ORS 240.060, 240.065, 240.080,
 31 240.123, 243.650 to 243.782, 292.055 and 341.290;

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

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

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

37 (a) Issue an order dismissing the complaint; and

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

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

42 (A) The complaint has been affirmed pursuant to subsection (2) of this section and the board
 43 finds that the person who has committed, or who is engaging, in an unfair labor practice has done
 44 so repetitively, knowing that the action taken was an unfair labor practice and took the action
 45 disregarding this knowledge, or that the action constituting the unfair labor practice was egregious;

1 or

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

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

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

10 **SECTION 6.** ORS 243.682 is amended to read:

11 243.682. (1) If a question of representation exists, the Employment Relations Board shall:

12 (a) Upon application of a public employer, a public employee or a labor organization, designate
 13 the appropriate bargaining unit, and in making its determination shall consider such factors as
 14 community of interest, wages, hours and other working conditions of the employees involved, the
 15 history of collective bargaining, and the desires of the employees. The board may determine a unit
 16 to be the appropriate unit in a particular case even though some other unit might also be appro-
 17 priate. Unless a labor organization and a public employer agree otherwise, the board may not des-
 18 ignate as appropriate a bargaining unit that includes:

19 (A) A faculty member described in ORS 243.650 [(23)(c)(C)] **(21)(c)(C)** who supervises one or
 20 more other faculty members; and

21 (B) Any faculty member who is supervised by a faculty member described in subparagraph (A)
 22 of this paragraph.

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

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

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

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

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

35 (2)(a) Notwithstanding subsection (1) of this section, when an employee, group of employees or
 36 labor organization acting on behalf of the employees files a petition alleging that a majority of em-
 37 ployees in a unit appropriate for the purpose of collective bargaining wish to be represented by a
 38 labor organization for that purpose, or when a labor organization files a petition alleging that the
 39 majority in a group of unrepresented employees seek to be added to an existing bargaining unit, the
 40 board shall investigate the petition. If the board finds that a majority of the employees in a unit
 41 appropriate for bargaining or a majority of employees in a group of unrepresented employees that
 42 is appropriate to add to an existing bargaining unit have signed authorizations designating the labor
 43 organization specified in the petition as the employees' bargaining representative and that no other
 44 labor organization is currently certified or recognized as the exclusive representative of any of the
 45 employees in the unit or in the group of unrepresented employees seeking to be added to an existing

1 bargaining unit, the board may not conduct an election but shall certify the labor organization as
 2 the exclusive representative unless a petition for a representation election is filed as provided in
 3 subsection (3) of this section.

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

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

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

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

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

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

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

20 (3)(a) Notwithstanding subsection (2) of this section, when a petition requesting certification has
 21 been filed under subsection (2) of this section, an employee or a group of employees in the unit
 22 designated by the petition, or one or more of the unrepresented employees seeking to be added to
 23 an existing bargaining unit, may file a petition with the board to request that a representation
 24 election be conducted.

25 (b) The petition requesting a representation election must be supported by at least 30 percent
 26 of the employees in the bargaining unit designated by the petition, or 30 percent of the unrepre-
 27 sented employees seeking to be added to an existing bargaining unit.

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

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

35 **SECTION 7.** ORS 243.726 is amended to read:

36 243.726. (1) Participation in a strike shall be unlawful for any public employee who is not in-
 37 cluded in an appropriate bargaining unit for which an exclusive representative has been certified
 38 by the Employment Relations Board or recognized by the employer; or is included in an appropriate
 39 bargaining unit that provides for resolution of a labor dispute by petition to final and binding arbi-
 40 tration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650
 41 to 243.782, 292.055 and 341.290.

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

45 (a) The requirements of ORS 243.712 and 243.722 relating to the resolution of labor disputes

1 have been complied with in good faith;

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

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

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

9 (e) The union's strike does not include unconventional strike activity not protected under the
10 National Labor Relations Act on June 6, 1995, and does not constitute an unfair labor practice un-
11 der ORS 243.672 [(2)(f)] (3).

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

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

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

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

28 (b) When a labor organization or individual disobeys an order of the appropriate circuit court
29 issued pursuant to enforcing an order of the board involving this section and ORS 243.736 or 243.738,
30 they shall be punished according to the provisions of ORS 33.015 to 33.155, except that the amount
31 of the fine shall be at the discretion of the court.

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

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

40 **SECTION 8.** ORS 329A.430 is amended to read:

41 329A.430. (1) As used in this section:

42 (a) "Certified family child care provider" means an individual who operates a family child care
43 home that is certified under ORS 329A.280.

44 (b) "Child care subsidy" means a payment made by the state on behalf of eligible children for
45 child care services provided for periods of less than 24 hours in a day.

1 (c) “Exempt family child care provider” means an individual who provides child care services
 2 in the home of the individual or in the home of the child, whose services are not required to be
 3 certified or registered under ORS 329A.250 to 329A.450 and who receives a child care subsidy.

4 (d) “Family child care provider” means an individual who is a certified, registered or exempt
 5 family child care provider.

6 (e) “Registered family child care provider” means an individual who operates a family child care
 7 home that is registered under ORS 329A.330.

8 (2) For purposes of collective bargaining under ORS 243.650 to 243.782, the State of Oregon is
 9 the public employer of record of family child care providers.

10 (3) Notwithstanding ORS 243.650 [(19)] (17), family child care providers are considered to be
 11 public employees governed by ORS 243.650 to 243.782. Family child care providers have the right to
 12 form, join and participate in the activities of labor organizations of their own choosing for the pur-
 13 pose of representation and collective bargaining on matters concerning labor relations. These rights
 14 shall be exercised in accordance with the rights granted to public employees, with mediation and
 15 interest arbitration under ORS 243.742 as the method of concluding the collective bargaining pro-
 16 cess. Family child care providers may not strike.

17 (4) Notwithstanding subsections (2) and (3) of this section, family child care providers are not
 18 for any other purpose employees of the State of Oregon or any other public body.

19 (5) The Oregon Department of Administrative Services shall represent the State of Oregon in
 20 collective bargaining negotiations with the certified or recognized exclusive representatives of all
 21 appropriate bargaining units of family child care providers. The Oregon Department of Administra-
 22 tive Services is authorized to agree to terms and conditions of collective bargaining agreements on
 23 behalf of the State of Oregon.

24 (6) Notwithstanding ORS 243.650 (1):

25 (a) The appropriate bargaining unit for certified and registered family child care providers is a
 26 bargaining unit of all certified and registered family child care providers in the state.

27 (b) The appropriate bargaining unit for exempt family child care providers is a bargaining unit
 28 of all exempt family child care providers in the state.

29 (7) This section does not modify any right of a parent or legal guardian to choose and terminate
 30 the services of a family child care provider.

31 **SECTION 9.** ORS 410.614 is amended to read:

32 410.614. (1) Notwithstanding ORS 243.650 [(19)] (17) and [(20)] (18), the Home Care Commission
 33 shall be considered a public employer and home care workers shall be considered public employees
 34 governed by ORS 243.650 to 243.782.

35 (2) Home care workers have the right to form, join and participate in the activities of labor
 36 organizations of their own choosing for the purpose of representation and collective bargaining with
 37 the commission on matters concerning employment relations. These rights shall be exercised in ac-
 38 cordance with the rights granted to public employees with mediation and interest arbitration under
 39 ORS 243.742 as the method of concluding the collective bargaining process.

40 (3) Home care workers are not public employees with respect to the Public Employees Retirement
 41 System, the Oregon Public Service Retirement Plan or the Public Employees’ Benefit Board.

42 (4) Home care workers do not have the right to strike.

43 **SECTION 10.** ORS 410.614, as amended by section 16, chapter 75, Oregon Laws 2018, is
 44 amended to read:

45 410.614. (1) Notwithstanding ORS 243.650 [(19)] (17) and [(20)] (18), the Home Care Commission

1 shall be considered a public employer and home care workers and personal support workers shall
2 be considered public employees governed by ORS 243.650 to 243.782.

3 (2) Home care workers and personal support workers have the right to form, join and participate
4 in the activities of labor organizations of their own choosing for the purpose of representation and
5 collective bargaining with the commission on matters concerning employment relations. These rights
6 shall be exercised in accordance with the rights granted to public employees with mediation and
7 interest arbitration under ORS 243.742 as the method of concluding the collective bargaining pro-
8 cess.

9 (3) Home care workers and personal support workers are not public employees with respect to
10 the Public Employees Retirement System, the Oregon Public Service Retirement Plan or the Public
11 Employees' Benefit Board.

12 (4) Home care workers and personal support workers do not have the right to strike.

13 **SECTION 11.** ORS 443.733 is amended to read:

14 443.733. (1) As used in this section, "adult foster care home provider" means a person who op-
15 erates an adult foster home in the provider's home and who receives fees or payments from state
16 funds for providing adult foster care home services. "Adult foster care home provider" does not in-
17 clude a person:

18 (a) Who is a resident manager of an adult foster home who does not provide adult foster care
19 home services in the resident manager's own home or who does not have a controlling interest in,
20 or is not an officer or partner in, the entity that is the provider of adult foster care home services;

21 (b) Who is not a natural person; or

22 (c) Whose participation in collective bargaining is determined by the licensing agency to be in-
23 consistent with this section or in violation of state or federal law.

24 (2) For purposes of collective bargaining under ORS 243.650 to 243.782, the State of Oregon is
25 the public employer of record of adult foster care home providers.

26 (3) Notwithstanding ORS 243.650 [(19)] (17), adult foster care home providers are considered to
27 be public employees governed by ORS 243.650 to 243.782. Adult foster care home providers have the
28 right to form, join and participate in the activities of labor organizations of their own choosing for
29 the purposes of representation and collective bargaining on matters concerning labor relations.
30 Mandatory subjects of collective bargaining include but are not limited to provider base rates and
31 add-on payments. These rights shall be exercised in accordance with the rights granted to public
32 employees, with mediation and interest arbitration under ORS 243.742 as the method of concluding
33 the collective bargaining process. Adult foster care home providers may not strike.

34 (4) Notwithstanding subsections (2) and (3) of this section, adult foster care home providers are
35 not for any other purpose employees of the State of Oregon or any other public body.

36 (5) The Oregon Department of Administrative Services shall represent the State of Oregon in
37 collective bargaining negotiations with the certified or recognized exclusive representative of an
38 appropriate bargaining unit of adult foster care home providers. The Oregon Department of Admin-
39 istrative Services is authorized to agree to terms and conditions of collective bargaining agreements
40 on behalf of the State of Oregon.

41 (6) Notwithstanding ORS 243.650 (1), an appropriate bargaining unit for adult foster care home
42 providers is any bargaining unit recognized by the Governor in an executive order issued prior to
43 January 1, 2008.

44 (7) This section does not modify any right of an adult receiving foster care.

45 **SECTION 12.** ORS 652.610 is amended to read:

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

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

8 (A) The date of the payment;

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

10 (C) The name of the employee;

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

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

13 (F) The rate or rates of pay;

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

16 (H) Gross wages;

17 (I) Net wages;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (5) This section does not:

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

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

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

34