

House Bill 2643

Sponsored by Representative HOLVEY (at the request of Oregon School Employees Association) (Presession filed.)

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**.

Provides that membership in public sector labor organization is voluntary. Prohibits public employer from requiring public employee to pay dues to labor organization if employee chooses not to join labor organization.

Establishes Employment Relations Protection Account. Imposes assessment, administered by Employment Relations Board, on public employers in amount that equals established percentage of employer's payroll for public employees who are members of labor organization. Directs board to deposit assessments in Employment Relations Protection Account. Directs board to distribute monies in account, minus amount retained by board for administrative costs, to exclusive representative of employer's employees who are members of labor organization. Makes matters related to assessments subject to collective bargaining.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to assessments on public employers that have employees who may choose to join labor or-
3 ganizations; creating new provisions; amending ORS 243.650, 243.666, 243.672, 243.676, 243.682,
4 243.726, 292.055, 329A.430, 410.614 and 443.733; and declaring an emergency.

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

6 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 243.650 to**
7 **243.782.**

8 **SECTION 2. (1) The purpose of this section is to preserve and protect the fundamental**
9 **interests, rights and obligations of the people of this state expressed in ORS 243.656.**

10 **(2) Membership in a labor organization is voluntary. A public employer may not require**
11 **a public employee that chooses not to join a labor organization to pay dues, initiation fees**
12 **or assessments to a labor organization. An agreement involving union security entered into**
13 **between a public employer and an exclusive representative may provide for the voluntary**
14 **payment by an employee to an exclusive representative of dues, initiation fees or assess-**
15 **ments.**

16 **(3) An assessment is imposed on each public employer with employees represented by an**
17 **exclusive representative. The amount of the assessment is _____ percent of the wages paid**
18 **by the public employer to the public employees represented by the exclusive representative.**

19 **(4) A public employer shall pay the assessment under subsection (3) of this section to the**
20 **Employment Relations Board, in the form and manner prescribed by the board, no later than**
21 **the 15th day of the month following the month in which the wages were paid. If a public**
22 **employer has public employees in different bargaining units, the public employer shall pay**
23 **an assessment for each bargaining unit. The public employer shall maintain payroll records**
24 **necessary to verify that the employer paid the correct assessment.**

25 **(5) The board shall deposit all assessments paid under subsection (4) of this section to**
26 **the Employment Relations Protection Account established in section 3 of this 2019 Act. The**

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 board shall distribute funds in the account to each exclusive representative for which an
 2 assessment was paid. The board may retain a portion of the funds to pay the board's costs
 3 in administering the account.

4 (6) An exclusive representative that receives funds under subsection (5) of this section
 5 shall maintain the funds in a separate account and may not comingle the funds with other
 6 moneys. The exclusive representative may use funds in the separate account for any pur-
 7 pose that serves the state policies expressed in ORS 243.656. Funds in the separate account
 8 may not be used to:

9 (a) Promote or oppose any political committee, as defined in ORS 260.005, or the nomi-
 10 nation or election of any candidate for political office;

11 (b) Gather signatures for an initiative, referendum or recall petition; or

12 (c) Promote or oppose the adoption of a measure, as defined in ORS 260.005, a referendum
 13 petition or the recall of a public office holder.

14 (7) The payment of an assessment under this section is not a violation of ORS 243.668 or
 15 243.670 or an unfair labor practice under ORS 243.672.

16 **SECTION 3.** The Employment Relations Protection Account is established in the State
 17 Treasury, separate and distinct from the General Fund. The account consists of moneys de-
 18 posited in the account by the Employment Relations Board in accordance with section 2 of
 19 this 2019 Act. Moneys in the account are continuously appropriated to the Employment Re-
 20 lations Board for carrying out section 2 of this 2019 Act. Interest earned by the account shall
 21 be credited to the account.

22 **SECTION 4.** ORS 243.650 is amended to read:

23 243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

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

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

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

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

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

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

6 (7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indi-
7 rect monetary benefits, hours, vacations, sick leave, grievance procedures, **matters related to the**
8 **assessments, payments or distributions under section 2 of this 2019 Act**, and other conditions
9 of employment.

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

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

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

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

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

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

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

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

44 [(10) "Fair-share agreement" means an agreement between the public employer and the recognized
45 or certified bargaining representative of public employees whereby employees who are not members of

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

12 [(11)] (10) “Final offer” means the proposed contract language and cost summary submitted to
 13 the mediator within seven days of the declaration of impasse.

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

18 [(13)] (12) “Labor organization” means any organization that has as one of its purposes repre-
 19 senting employees in their employment relations with public employers.

20 [(14)] (13) “Last best offer package” means the offer exchanged by parties not less than 14 days
 21 prior to the date scheduled for an interest arbitration hearing.

22 [(15)] (14) “Legislative body” means the Legislative Assembly, the city council, the county
 23 commission and any other board or commission empowered to levy taxes.

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

32 [(17)] (16) “Mediation” means assistance by an impartial third party in reconciling a labor dis-
 33 pute between the public employer and the exclusive representative regarding employment relations.

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

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

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

1 quasi-public corporations.

2 [(21)] (19) "Public employer representative" includes any individual or individuals specifically
3 designated by the public employer to act in its interests in all matters dealing with employee rep-
4 resentation, collective bargaining and related issues.

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

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

20 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS
21 352.002 or the Oregon Health and Science University who:

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

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

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

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

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

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

34 [(24)] (22) "Unfair labor practice" means the commission of an act designated an unfair labor
35 practice in ORS 243.672.

36 [(25)] (23) "Voluntary arbitration" means the procedure whereby parties involved in a labor
37 dispute mutually agree to submit their differences to a third party for a final and binding decision.

38 **SECTION 5.** ORS 243.666 is amended to read:

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

1 *charity or to another charitable organization mutually agreed upon by the employee affected and the*
 2 *representative of the labor organization to which such employee would otherwise be required to pay*
 3 *dues. The employee shall furnish written proof to the employer of the employee that this has been*
 4 *done.]*

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

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

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

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

15 **SECTION 6.** ORS 243.672 is amended to read:

16 243.672. (1) It is an unfair labor practice for a public employer or its designated representative
 17 to do any of the following:

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

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

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

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

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

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

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

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

38 (i) Violate ORS 243.670 (2).

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

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

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

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

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

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

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

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

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

34 **SECTION 7.** ORS 292.055 is amended to read:

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

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

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

44 (4) In addition to making such deductions and payments to any labor organization certified un-
 45 der the rules of the Employment Relations Board as representatives of employees in a bargaining

1 unit, any department, board, commission, bureau, institution or other agency of the state shall make
 2 deductions for and payments to noncertified, yet bona fide, labor organizations, if requested to do
 3 so by officers and employees in that department, board, commission, bureau, institution, or other
 4 state agency, and for so long as the requests are not revoked. No deductions for and payments to
 5 any labor organization under this section shall be deemed an unfair labor practice under ORS
 6 243.672.

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

14 **SECTION 8.** ORS 243.682 is amended to read:

15 243.682. (1) If a question of representation exists, the Employment Relations Board shall:

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

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

25 (B) Any faculty member who is supervised by a faculty member described in subparagraph (A)
 26 of this paragraph; **or**

27 **(C) Both academically licensed and unlicensed or nonacademically licensed school em-**
 28 **ployees. Academically licensed units may include but are not limited to teachers, nurses,**
 29 **counselors, therapists, psychologists, child development specialists and similar positions.**
 30 **This limitation does not apply to any bargaining unit certified or recognized prior to June**
 31 **6, 1995, or to any school district with fewer than 50 employees.**

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

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

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

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

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

44 (2)(a) Notwithstanding subsection (1) of this section, when an employee, group of employees or
 45 labor organization acting on behalf of the employees files a petition alleging that a majority of em-

1 ployees in a unit appropriate for the purpose of collective bargaining wish to be represented by a
 2 labor organization for that purpose, or when a labor organization files a petition alleging that the
 3 majority in a group of unrepresented employees seek to be added to an existing bargaining unit, the
 4 board shall investigate the petition. If the board finds that a majority of the employees in a unit
 5 appropriate for bargaining or a majority of employees in a group of unrepresented employees that
 6 is appropriate to add to an existing bargaining unit have signed authorizations designating the labor
 7 organization specified in the petition as the employees' bargaining representative and that no other
 8 labor organization is currently certified or recognized as the exclusive representative of any of the
 9 employees in the unit or in the group of unrepresented employees seeking to be added to an existing
 10 bargaining unit, the board may not conduct an election but shall certify the labor organization as
 11 the exclusive representative unless a petition for a representation election is filed as provided in
 12 subsection (3) of this section.

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

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

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

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

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

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

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

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

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

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

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

44 **SECTION 9.** ORS 243.676 is amended to read:

45 243.676. (1) Whenever a written complaint is filed alleging that any person has engaged in or is

1 engaging in any unfair labor practice listed in ORS 243.672 (1) [*and* (2)] **to (4)** and 243.752, the
 2 Employment Relations Board or its agent shall:

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

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

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

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

14 (a) State its findings of fact;

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

17 (c) Take such affirmative action, including but not limited to the reinstatement of employees
 18 with or without back pay, as necessary to effectuate the purposes of ORS 240.060, 240.065, 240.080,
 19 240.123, 243.650 to 243.782, 292.055 and 341.290;

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

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

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

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

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

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

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

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

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

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

43 **SECTION 10.** ORS 243.726 is amended to read:

44 243.726. (1) Participation in a strike shall be unlawful for any public employee who is not in-
 45 cluded in an appropriate bargaining unit for which an exclusive representative has been certified

1 by the Employment Relations Board or recognized by the employer; or is included in an appropriate
 2 bargaining unit that provides for resolution of a labor dispute by petition to final and binding arbi-
 3 tration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650
 4 to 243.782, 292.055 and 341.290.

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

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

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

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

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

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

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

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

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

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

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

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

45 (6) As used in this section, "danger or threat to the health, safety or welfare of the public" does

1 not include an economic or financial inconvenience to the public or to the public employer that is
2 normally incident to a strike by public employees.

3 **SECTION 11.** ORS 329A.430 is amended to read:

4 329A.430. (1) As used in this section:

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

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

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

12 (d) "Family child care provider" means an individual who is a certified, registered or exempt
13 family child care provider.

14 (e) "Registered family child care provider" means an individual who operates a family child care
15 home that is registered under ORS 329A.330.

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

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

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

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

32 (6) Notwithstanding ORS 243.650 (1):

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

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

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

39 **SECTION 12.** ORS 410.614 is amended to read:

40 410.614. (1) Notwithstanding ORS 243.650 [(19) and (20)] (17) and (18), the Home Care Commis-
41 sion shall be considered a public employer and home care workers shall be considered public em-
42 ployees governed by ORS 243.650 to 243.782.

43 (2) Home care workers have the right to form, join and participate in the activities of labor
44 organizations of their own choosing for the purpose of representation and collective bargaining with
45 the commission on matters concerning employment relations. These rights shall be exercised in ac-

1 cordance with the rights granted to public employees with mediation and interest arbitration under
 2 ORS 243.742 as the method of concluding the collective bargaining process.

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

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

6 **SECTION 13.** ORS 410.614, as amended by section 16, chapter 75, Oregon Laws 2018, is
 7 amended to read:

8 410.614. (1) Notwithstanding ORS 243.650 [(19) and (20)] (17) and (18), the Home Care Commis-
 9 sion shall be considered a public employer and home care workers and personal support workers
 10 shall be considered public employees governed by ORS 243.650 to 243.782.

11 (2) Home care workers and personal support workers have the right to form, join and participate
 12 in the activities of labor organizations of their own choosing for the purpose of representation and
 13 collective bargaining with the commission on matters concerning employment 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.

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

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

21 **SECTION 14.** ORS 443.733 is amended to read:

22 443.733. (1) As used in this section, "adult foster care home provider" means a person who op-
 23 erates an adult foster home in the provider's home and who receives fees or payments from state
 24 funds for providing adult foster care home services. "Adult foster care home provider" does not in-
 25 clude a person:

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

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

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

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

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

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

44 (5) The Oregon Department of Administrative Services shall represent the State of Oregon in
 45 collective bargaining negotiations with the certified or recognized exclusive representative of an

1 appropriate bargaining unit of adult foster care home providers. The Oregon Department of Admin-
2 istrative Services is authorized to agree to terms and conditions of collective bargaining agreements
3 on behalf of the State of Oregon.

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

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

8 **SECTION 15. This 2019 Act being necessary for the immediate preservation of the public**
9 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
10 **on its passage.**

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