

## HOUSE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2930

By JOINT COMMITTEE ON WAYS AND MEANS

June 23

1 On page 1 of the printed A-engrossed bill, delete lines 5 through 12.

2 Delete pages 2 through 13 and insert:

3 **“SECTION 1. Sections 2 and 3 of this 2021 Act are added to and made a part of ORS**  
4 **243.650 to 243.806.**

5 **“SECTION 2. (1) For purposes of an arbitration proceeding under ORS 243.706 concerning**  
6 **alleged misconduct by a law enforcement officer:**

7 **“(a) A law enforcement agency or, if applicable, a civilian or community oversight board,**  
8 **agency or review body, has the burden of proof by a preponderance of the evidence to show**  
9 **that:**

10 **“(A) The officer engaged in the alleged misconduct; and**

11 **“(B) Any disciplinary action taken against the officer was with just cause, as defined in**  
12 **ORS 236.350.**

13 **“(b) In determining the reasonableness of a disciplinary action imposed by a law**  
14 **enforcement agency or a civilian or community oversight board, agency or review body, in-**  
15 **cluding whether the level of discipline is appropriate, an arbitrator shall uphold the discipli-**  
16 **nary action unless the arbitrator finds that the disciplinary action is arbitrary and**  
17 **capricious.**

18 **“(c) When the imposed disciplinary action is termination of employment, an arbitrator**  
19 **may not set aside or reduce the imposed disciplinary action if setting aside or reducing the**  
20 **disciplinary action is inconsistent with the public interest in maintaining community trust,**  
21 **enforcing a higher standard of conduct for law enforcement officers and ensuring an ac-**  
22 **countable, fair and just disciplinary process.**

23 **“(2)(a) Notwithstanding ORS 243.706 (1), and subject to paragraph (b) of this subsection,**  
24 **in carrying out an arbitration proceeding described under ORS 243.706 (3), the Employment**  
25 **Relations Board shall appoint a person from a list of qualified, indifferent and unbiased per-**  
26 **sons to serve as the arbitrator of the proceeding. The board shall submit to each of the**  
27 **parties subject to the proceeding the list of persons who may serve as arbitrators.**

28 **“(b) After the board has selected a person from the list to serve as the arbitrator of the**  
29 **proceeding, each of the parties subject to the proceeding is entitled to one opportunity to**  
30 **object to the board’s proposed arbitrator. If a party objects to the proposed arbitrator, the**  
31 **board shall select an alternative person to serve as the arbitrator. If the other party objects**  
32 **to the alternative person, the board shall make a final selection from the names remaining**  
33 **on the list as to who shall serve as the arbitrator of the proceeding.**

34 **“(3) The requirements described in this section are not subject to collective bargaining.**

35 **“(4) As used in this section:**

1       “(a) ‘Civilian or community oversight board, agency or review body’ means a board, an  
2 agency or a body:

3       “(A) Designated by a municipality or a law enforcement agency in performing duties re-  
4 lated to investigating allegations of officer misconduct or reviewing police policies and prac-  
5 tices; or

6       “(B) Created to oversee disciplinary matters concerning law enforcement officers pursu-  
7 ant to a city charter or ordinance for which a measure that included the question of whether  
8 to establish the board, agency or body was referred to and approved by the people of the city  
9 at an election held on or after July 1, 2020.

10       “(b) ‘Law enforcement agency’ and ‘law enforcement officer’ have the meanings given  
11 those terms in ORS 131.930.

12       “SECTION 3. (1) For matters concerning alleged misconduct by a law enforcement offi-  
13 cer, the following shall make determinations regarding the alleged misconduct and impose  
14 disciplinary action in response to such determinations in accordance with the uniform stan-  
15 dards adopted by the Commission on Statewide Law Enforcement Standards of Conduct and  
16 Discipline under section 4 of this 2021 Act:

17       “(a) A law enforcement agency located anywhere in this state.

18       “(b) An arbitrator who serves in an arbitration proceeding described under ORS 243.706  
19 (3).

20       “(c) A civilian or community oversight board, agency or review body.

21       “(2) The requirements described in this section are not subject to collective bargaining.

22       “(3) As used in this section:

23       “(a) ‘Civilian or community oversight board, agency or review body’ means a board, an  
24 agency or a body:

25       “(A) Designated by a municipality or a law enforcement agency in performing duties re-  
26 lated to investigating allegations of officer misconduct or reviewing police policies and prac-  
27 tices; or

28       “(B) Created to oversee disciplinary matters concerning law enforcement officers pursu-  
29 ant to a city charter or ordinance for which a measure that included the question of whether  
30 to establish the board, agency or body was referred to and approved by the people of the city  
31 at an election held on or after July 1, 2020.

32       “(b) ‘Law enforcement agency’ and ‘law enforcement officer’ have the meanings given  
33 those terms in ORS 131.930.

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

36       “(a) Standards of conduct, including guidelines and procedures, to which law enforcement  
37 officers shall adhere; and

38       “(b) Disciplinary standards and procedures, including a range of disciplinary actions that  
39 may include consideration of aggravating or mitigating circumstances, by which a law  
40 enforcement agency, a civilian or community oversight board, agency or review body, and  
41 an arbitrator who serves in an arbitration proceeding described under ORS 243.706 (3) shall  
42 make determinations regarding alleged misconduct by a law enforcement officer, and shall  
43 make recommendations for and impose disciplinary action in response to such determi-  
44 nations.

45       “(2) The commission consists of 15 members as follows:

1       “(a) The Director of the Department of Public Safety Standards and Training or a  
2       designee from the department.

3       “(b) The Attorney General or a designee from the Attorney General’s office.

4       “(c) The President of the Senate shall appoint one nonvoting member, acting in an advi-  
5       sory capacity only, from among members of the Senate.

6       “(d) The Speaker of the House of Representatives shall appoint one nonvoting member,  
7       acting in an advisory capacity only, from among members of the House of Representatives.

8       “(e) The Director of the Department of Public Safety Standards and Training and the  
9       Attorney General shall jointly appoint 11 members of the commission consistent with the  
10      following:

11      “(A) Two members who are chief law enforcement officers.

12      “(B) Two members who represent labor organizations who represent law enforcement  
13      officers.

14      “(C) Two members who represent historically marginalized groups or community-based  
15      organizations that represent communities impacted by policing.

16      “(D) One member who represents a federally recognized Indian tribe or association of  
17      tribes within this state.

18      “(E) Two members who are representatives of local government to represent the inter-  
19      ests of cities and counties.

20      “(F) One member who represents public defender organizations established under ORS  
21      chapter 151 or the Oregon Criminal Defense Lawyers Association.

22      “(G) One member who represents the interests of prosecutors in this state.

23      “(3) At a minimum, the uniform standards described under subsection (1) of this section  
24      must address standards of conduct and discipline regarding:

25      “(a) Unjustified or excessive use of physical or deadly force;

26      “(b) Sexual harassment;

27      “(c) Sexual assault;

28      “(d) Assault;

29      “(e) Conduct that is motivated by or based on a real or perceived factor of an individual’s  
30      race, ethnicity, national origin, sex, gender identity, sexual orientation, religion or  
31      homelessness;

32      “(f) Moral character; and

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

34      “(4) On or before October 1, 2022, the commission shall adopt and publish rules pursuant  
35      to ORS chapter 183 to establish the uniform standards described under subsection (1) of this  
36      section.

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

39      “(6) The meetings of the commission shall be open to the public in accordance with state  
40      law. Records of the commission shall be open and available to the public in accordance with  
41      state law.

42      “(7) The commission shall establish and implement an open hearing process for public  
43      input and deliberation before the commission adopts rules that establish the standards de-  
44      scribed under subsection (1) of this section, including:

45      “(a) Public notice;

1       “(b) Public outreach to solicit broad public participation; and  
2       “(c) Public hearings to receive public comment.  
3       “(8) A majority of the members of the commission constitutes a quorum for the trans-  
4 action of business.  
5       “(9) Official action by the commission requires the approval of a majority of the com-  
6 mission.  
7       “(10) The term of a member appointed under subsection (2)(e) of this section shall be two  
8 years. If there is a vacancy on the commission for any reason, the Director of the Depart-  
9 ment of Public Safety Standards and Training and the Attorney General shall appoint a per-  
10 son to the unexpired term.  
11       “(11) The members of the commission shall elect one person from the Department of  
12 Public Safety Standards and Training and one person from the Department of Justice from  
13 among the members of the commission to serve as cochairpersons of the commission who  
14 shall preside over meetings and execute the duties determined by the commission to be  
15 necessary.  
16       “(12) The commission may adopt rules necessary for the operation of the commission.  
17       “(13) A member of the commission who is not a member of the Legislative Assembly is  
18 entitled to compensation and expenses as provided in ORS 292.495.  
19       “(14)(a) The commission shall prepare and submit a report in the manner provided by  
20 ORS 192.245 to the House Committee on Judiciary or an interim committee of the Legislative  
21 Assembly related to the judiciary no later than September 1, 2022, and September 1 every  
22 year thereafter.  
23       “(b) The initial report must describe the development and adoption of the uniform stan-  
24 dards described under subsection (1) of this section, including the methodology used to ap-  
25 prise each law enforcement agency in this state and each civilian or community oversight  
26 board, agency or review body, of the standards. The commission shall include in reports  
27 submitted after September 1, 2022, information regarding the progress of each law enforce-  
28 ment agency and civilian or community oversight board, agency or review body, towards  
29 implementing and applying the uniform standards and the commission’s recommendations  
30 on updates to the standards, as are considered necessary.  
31       “(15) As used in this section:  
32       “(a) ‘Assault’ has the meaning given that term in ORS 163.115.  
33       “(b) ‘Civilian or community oversight board, agency or review body’ means a board, an  
34 agency or a body:  
35       “(A) Designated by a municipality or a law enforcement agency in performing duties re-  
36 lated to investigating allegations of officer misconduct or reviewing police policies and prac-  
37 tices; or  
38       “(B) Created to oversee disciplinary matters concerning law enforcement officers pursu-  
39 ant to a city charter or ordinance for which a measure that included the question of whether  
40 to establish the board, agency or body was referred to and approved by the people of the city  
41 at an election held on or after July 1, 2020.  
42       “(c) ‘Law enforcement agency’ and ‘law enforcement officer’ have the meanings given  
43 those terms in ORS 131.930.  
44       “(d) ‘Sexual assault’ has the meaning given that term in ORS 243.317.  
45       “SECTION 5. ORS 243.650, as amended by section 2, chapter 18, Oregon Laws 2020 (first special

1 session), is amended to read:

2 “243.650. As used in ORS 243.650 to 243.806, unless the context requires otherwise:

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

10 “(2) ‘Board’ means the Employment Relations Board.

11 “(3) ‘Certification’ means official recognition by the board that a labor organization is the ex-  
12 clusive representative for all of the employees in the appropriate bargaining unit.

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

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

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

30 “(7)(a) ‘Employment relations’ includes, but is not limited to, matters concerning direct or indi-  
31 rect monetary benefits, hours, vacations, sick leave, labor organization access to and communication  
32 with represented employees, grievance procedures and other conditions of employment.

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

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

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

40 “(e) For school district bargaining, ‘employment relations’ excludes class size, the school or ed-  
41 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-  
42 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,  
43 gum chewing and similar matters of personal conduct, the standards and procedures for student  
44 discipline, the time between student classes, the selection, agendas and decisions of 21st Century  
45 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS

1 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this  
2 subsection.

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

7 “[g] For employee bargaining involving sworn law enforcement officers of a law enforcement  
8 agency, as those terms are defined in ORS 131.930, ‘employment relations’ includes the development  
9 of a discipline guide or discipline matrix as those terms are defined in ORS 243.706.]

10 “[h] (g) For all other employee bargaining except school district bargaining and except as  
11 provided in paragraph (f) of this subsection, ‘employment relations’ excludes staffing levels and  
12 safety issues (except those staffing levels and safety issues that have a direct and substantial effect  
13 on the on-the-job safety of public employees), scheduling of services provided to the public, deter-  
14 mination of the minimum qualifications necessary for any position, criteria for evaluation or per-  
15 formance appraisal, assignment of duties, workload when the effect on duties is insubstantial,  
16 reasonable dress, grooming, and at-work personal conduct requirements respecting smoking, gum  
17 chewing, and similar matters of personal conduct at work, and any other subject proposed that is  
18 permissive under paragraphs (b), (c) and (d) of this subsection.

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

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

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

38 “(11) ‘Final offer’ means the proposed contract language and cost summary submitted to the  
39 mediator within seven days of the declaration of impasse.

40 “(12) ‘Labor dispute’ means any controversy concerning employment relations or concerning the  
41 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to  
42 arrange terms or conditions of employment relations, regardless of whether the disputants stand in  
43 the proximate relation of employer and employee.

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

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

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

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

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

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

20 “(19) ‘Public employee’ means an employee of a public employer but does not include elected  
21 officials, persons appointed to serve on boards or commissions, incarcerated persons working under  
22 Article I, section 41, of the Oregon Constitution, or persons who are confidential employees, super-  
23 visory employees or managerial employees.

24 “(20) ‘Public employer’ means the State of Oregon, and the following political subdivisions:  
25 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-  
26 politan service districts, public service corporations or municipal corporations and public and  
27 quasi-public corporations.

28 “(21) ‘Public employer representative’ includes any individual or individuals specifically desig-  
29 nated by the public employer to act in its interests in all matters dealing with employee represen-  
30 tation, collective bargaining and related issues.

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

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

1 “(b) ‘Supervisory employee’ includes a faculty member of a public university listed in ORS  
2 352.002 or the Oregon Health and Science University who:

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

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

7 “(c) ‘Supervisory employee’ does not include:

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

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

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

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

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

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

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

20 “(24) ‘Unfair labor practice’ means the commission of an act designated an unfair labor practice  
21 in ORS 243.672.

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

24 “**SECTION 6.** ORS 243.650, as amended by section 2, chapter 146, Oregon Laws 2019, and sec-  
25 tion 3, chapter 18, Oregon Laws 2020 (first special session), is amended to read:

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

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

34 “(2) ‘Board’ means the Employment Relations Board.

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

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

1 representative of its employees from discussing or executing written agreements regarding matters  
2 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-  
3 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

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

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

9 “(7)(a) ‘Employment relations’ includes, but is not limited to, matters concerning direct or indi-  
10 rect monetary benefits, hours, vacations, sick leave, labor organization access to and communication  
11 with represented employees, grievance procedures and other conditions of employment.

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

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

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

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

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

31 “[g] *For employee bargaining involving sworn law enforcement officers of a law enforcement*  
32 *agency, as those terms are defined in ORS 131.930, ‘employment relations’ includes the development*  
33 *of a discipline guide or discipline matrix as those terms are defined in ORS 243.706.]*

34 “[h] (g) For all other employee bargaining except school district bargaining and except as  
35 provided in paragraph (f) of this subsection, ‘employment relations’ excludes staffing levels and  
36 safety issues (except those staffing levels and safety issues that have a direct and substantial effect  
37 on the on-the-job safety of public employees), scheduling of services provided to the public, deter-  
38 mination of the minimum qualifications necessary for any position, criteria for evaluation or per-  
39 formance appraisal, assignment of duties, workload when the effect on duties is insubstantial,  
40 reasonable dress, grooming, and at-work personal conduct requirements respecting smoking, gum  
41 chewing, and similar matters of personal conduct at work, and any other subject proposed that is  
42 permissive under paragraphs (b), (c) and (d) of this subsection.

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

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

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

17           “(11) ‘Final offer’ means the proposed contract language and cost summary submitted to the  
18 mediator within seven days of the declaration of impasse.

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

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

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

27           “(15) ‘Legislative body’ means the Legislative Assembly, the city council, the county commission  
28 and any other board or commission empowered to levy taxes.

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

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

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

44           “(19) ‘Public employee’ means an employee of a public employer but does not include elected  
45 officials, persons appointed to serve on boards or commissions, incarcerated persons working under

1 Article I, section 41, of the Oregon Constitution, or persons who are confidential employees, super-  
2 visory employees or managerial employees.

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

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

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

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

25 “(b) ‘Supervisory employee’ includes a faculty member of a public university listed in ORS  
26 352.002 or the Oregon Health and Science University who:

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

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

31 “(c) ‘Supervisory employee’ does not include:

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

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

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

39 “(24) ‘Unfair labor practice’ means the commission of an act designated an unfair labor practice  
40 in ORS 243.672.

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

43 “**SECTION 7.** ORS 243.706, as amended by section 1, chapter 18, Oregon Laws 2020 (first special  
44 session), is amended to read:

45 “243.706. (1) A public employer may enter into a written agreement with the exclusive repre-

1 tentative of an appropriate bargaining unit setting forth a grievance procedure culminating in  
2 binding arbitration or any other dispute resolution process agreed to by the parties. As a condition  
3 of enforceability, any arbitration award that orders the reinstatement of a public employee or oth-  
4 erwise relieves the public employee of responsibility for misconduct shall comply with public policy  
5 requirements as clearly defined in statutes or judicial decisions including but not limited to policies  
6 respecting sexual harassment or sexual misconduct, unjustified and egregious use of physical or  
7 deadly force and serious criminal misconduct, related to work. In addition, with respect to claims  
8 that a grievant should be reinstated or otherwise relieved of responsibility for misconduct based  
9 upon the public employer's alleged previous differential treatment of employees for the same or  
10 similar conduct, the arbitration award must conform to the following principles:

11 “(a) Some misconduct is so egregious that no employee can reasonably rely on past treatment  
12 for similar offenses as a justification or defense to discharge or other discipline.

13 “(b) Public managers have a right to change disciplinary policies at any time, notwithstanding  
14 prior practices, if such managers give reasonable advance notice to affected employees and the  
15 change does not otherwise violate a collective bargaining agreement.

16 “(2) In addition to subsection (1) of this section, a public employer may enter into a written  
17 agreement with the exclusive representative of its employees providing that a labor dispute over  
18 conditions and terms of a contract may be resolved through binding arbitration.

19 “(3) Notwithstanding subsection (1) of this section, when an arbitration proceeding involves al-  
20 leged misconduct by a sworn law enforcement officer of any law enforcement agency, as those terms  
21 are defined in ORS 131.930, and the arbitrator makes a finding that misconduct has occurred con-  
22 sistent with the law enforcement agency's finding of misconduct **or, if applicable, consistent with**  
23 **a finding of misconduct by a civilian or community oversight board, agency or review body,**  
24 the arbitration award may not order any disciplinary action that differs from the disciplinary action  
25 imposed by the **law enforcement agency or the civilian or community oversight board, agency**  
26 **or review body,** if the disciplinary action imposed by the **law enforcement agency, or the civilian**  
27 **or community oversight board, agency or review body was in accordance with the uniform**  
28 **standards adopted by the Commission on Statewide Law Enforcement Standards of Conduct**  
29 **and Discipline established under section 4 of this 2021 Act** [*is consistent with the provisions of*  
30 *a discipline guide or discipline matrix adopted by the agency as a result of collective bargaining and*  
31 *incorporated into the agency's disciplinary policies*].

32 “(4) In an arbitration proceeding under this section, the arbitrators, or a majority of the  
33 arbitrators, may:

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

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

36 “(B) Require from either party the production of books, papers and documents the arbitrators  
37 find are relevant to the proceeding;

38 “(b) Administer oaths or affirmations to witnesses; and

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

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

42 “(6) The arbitrators issuing a subpoena under this section may rule on objections to the issuance  
43 of the subpoena.

44 “(7) If a person fails to comply with a subpoena issued under this section or if a witness refuses  
45 to testify on a matter on which the witness may be lawfully questioned, the party who requested the

1 subpoena or seeks the testimony may apply to the arbitrators for an order authorizing the party to  
2 apply to the circuit court of any county to enforce the subpoena or compel the testimony. On the  
3 application of the attorney of record for the party or on the application of the arbitrators, or a  
4 majority of the arbitrators, the court may require the person or witness to show cause why the  
5 person or witness should not be punished for contempt of court to the same extent and purpose as  
6 if the proceedings were pending before the court.

7 “(8) Witnesses appearing pursuant to subpoena, other than parties or officers or employees of  
8 the public employer, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415  
9 (2).

10 “(9) As used in this section[:], ‘**civilian or community oversight board, agency or review**  
11 **body**’ means a board, an agency or a body:

12 “(a) **Designated by a municipality or a law enforcement agency in performing duties re-**  
13 **lated to investigating allegations of officer misconduct or reviewing police policies and prac-**  
14 **tices; or**

15 “(b) **Created to oversee disciplinary matters concerning law enforcement officers pursu-**  
16 **ant to a city charter or ordinance for which a measure that included the question of whether**  
17 **to establish the board, agency or body was referred to and approved by the people of the city**  
18 **at an election held on or after July 1, 2020.**

19 “[*(a) ‘Discipline guide’ means a grid that is designed to provide parameters for the level of disci-*  
20 *pline to be imposed for an act of misconduct that is categorized by the severity of the misconduct and*  
21 *that take into account the presumptive level of discipline for the misconduct and any aggravating or*  
22 *mitigating factors.*]

23 “[*(b) ‘Discipline matrix’ means a grid used to determine the level of discipline to be imposed for*  
24 *an act of misconduct that is categorized by the severity of the misconduct, according to the intersection*  
25 *where the category of misconduct and the level of disciplinary action meet.*]

26 “**SECTION 8. Notwithstanding any other provision of law, the General Fund appropriation**  
27 **made to the Department of State Police by section 1 (4), chapter \_\_\_\_\_, Oregon Laws 2021**  
28 **(Enrolled House Bill 5028), for the biennium beginning July 1, 2021, for Administrative Ser-**  
29 **vices, Agency Support and Criminal Justice Information Services, is increased by \$255,773 for**  
30 **training expenses related to sections 3 and 4 of this 2021 Act.**

31 “**SECTION 9. Section 2 of this 2021 Act applies to collective bargaining agreements en-**  
32 **tered into or renewed on or after July 1, 2021.**

33 “**SECTION 10. Section 3 of this 2021 Act and the amendments to ORS 243.650 and 243.706**  
34 **by sections 5 to 7 of this 2021 Act apply to collective bargaining agreements entered into or**  
35 **renewed on or after the operative date specified in section 10 of this 2021 Act.**

36 “**SECTION 11. Section 3 of this 2021 Act and the amendments to ORS 243.650 and 243.706**  
37 **by sections 5 to 7 of this 2021 Act become operative on or before November 1, 2022, but not**  
38 **sooner than 30 days after the date required under section 4 (4) of this 2021 Act for the**  
39 **Commission on Statewide Law Enforcement Standards of Conduct and Discipline to adopt**  
40 **and publish the rules establishing the uniform standards described under section 4 (1) of this**  
41 **2021 Act.**

42 “**SECTION 12. This 2021 Act being necessary for the immediate preservation of the public**  
43 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**  
44 **on July 1, 2021.”**