

# A-Engrossed House Bill 4115

Ordered by the House February 15  
Including House Amendments dated February 15

Sponsored by Representatives HELFRICH, EVANS; Representatives BOICE, CONRAD, GAMBA, GRAYBER, HARTMAN, HELM, HIEB, HUDSON, JAVADI, LEVY B, LIVELY, MANNIX, NOSSE, OSBORNE, OWENS, Senators LIEBER, MANNING JR, PATTERSON, STEINER, THATCHER, WEBER (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. The statement includes a measure digest written in compliance with applicable readability standards.

**Digest: The Act modifies a defined term under PECBA. The Act restricts the makeup of certain collective bargaining units. The Act takes effect as soon as it is passed. (Flesch Readability Score: 70.4).**

*[Digest: The Act modifies a defined term under PECBA. (Flesch Readability Score: 61.2).]*

Modifies the definition of "supervisory employee" to **include certain employees and** exclude certain strike-prohibited public employees. **Limits the permissible composition of bargaining units regarding the inclusion of certain guards and police officers who serve in a rank that is equivalent to the rank of sergeant and subordinate employees.**

**Declares an emergency, effective on passage.**

## A BILL FOR AN ACT

1  
2 Relating to employment classification of certain strike-prohibited employees; amending ORS 243.650  
3 and 243.682; and declaring an emergency.

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

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

6 243.650. As used in ORS 243.650 to 243.809, unless the context requires otherwise:

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

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

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

17 (4) "Collective bargaining" means the performance of the mutual obligation of a public employer  
18 and the representative of its employees to meet at reasonable times and confer in good faith with  
19 respect to employment relations for the purpose of negotiations concerning mandatory subjects of  
20 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute  
21 concerning the interpretation or application of a collective bargaining agreement, and to execute  
22 written contracts incorporating agreements that have been reached on behalf of the public employer  
23 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and

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

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

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

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

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

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

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

21 (e) For school district bargaining:

22 (A) "Employment relations" includes class size and caseload limits in schools that qualify for  
 23 assistance under Title I of the federal Elementary and Secondary Education Act of 1965.

24 (B) "Employment relations" excludes the school or educational calendar, standards of perform-  
 25 ance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and  
 26 at-work personal conduct requirements respecting smoking, gum chewing and similar matters of  
 27 personal conduct, the standards and procedures for student discipline, the time between student  
 28 classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS  
 29 329.704, requirements for expressing milk under ORS 653.077, and any other subject proposed that  
 30 is permissive under paragraphs (b), (c) and (d) of this subsection.

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

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

44 (8) "Exclusive representative" means the labor organization that, as a result of certification by  
 45 the board or recognition by the employer, has the right to be the collective bargaining agent of all

1 employees in an appropriate bargaining unit.

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

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

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

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

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

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

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

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

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

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

45 (19) "Public employee" means an employee of a public employer but does not include elected

1 officials, persons appointed to serve on boards or commissions, incarcerated persons working under  
2 Article I, section 41, of the Oregon Constitution, or persons who are confidential employees, super-  
3 visory employees or managerial employees.

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

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

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

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

26 (b) "Supervisory employee" includes:

27 (A) A faculty member of a public university listed in ORS 352.002 or the Oregon Health and  
28 Science University who:

29 [(A)] (i) Is employed as a president, vice president, provost, vice provost, dean, associate dean,  
30 assistant dean, head or equivalent position; or

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

33 (B) **A guard at a correctional institution or mental hospital or a police officer who serves**  
34 **in the rank of lieutenant or higher except for those lieutenant guards or police officers who**  
35 **were included in an appropriate bargaining unit for purposes of collective bargaining on or**  
36 **before the effective date of this 2024 Act.**

37 (C) **An employee of the Criminal Justice Division of the Department of Justice who**  
38 **manages police officers of the division.**

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

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

42 (B) A firefighter **or an emergency communications worker** prohibited from striking by ORS  
43 243.736 who assigns, transfers or directs the work of other employees but does not have the au-  
44 thority to hire, discharge or impose economic discipline on those employees;

45 (C) **A guard at a correctional institution or mental hospital or a police officer who:**

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

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

3 (iii) Assigns, transfers or directs the work of other employees but does not have the au-  
4 thority to hire, discharge or impose economic discipline on those employees;

5 [(C)] (D) A faculty member of a public university listed in ORS 352.002 or the Oregon Health  
6 and Science University who is not a faculty member described in paragraph (b) of this subsection;  
7 or

8 [(D)] (E) An employee of the Oregon State Police who:

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

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

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

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

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

17 **SECTION 2.** ORS 243.682 is amended to read:

18 243.682. (1) If a question of representation exists, the Employment Relations Board [*shall*]:

19 (a)(A)(i) **Shall**, upon application of a public employer, a public employee or a labor organization,  
20 designate the appropriate bargaining unit, and in making its determination shall consider such fac-  
21 tors as community of interest, wages, hours and other working conditions of the employees involved,  
22 the history of collective bargaining, and the desires of the employees. The board may determine a  
23 unit to be the appropriate unit in a particular case even though some other unit might also be ap-  
24 propriate.

25 (ii) **May not designate as appropriate a bargaining unit that includes both guards at a**  
26 **correctional institution or mental hospital or police officers who serve in a rank equivalent**  
27 **to the rank of sergeant and rank-and-file subordinate employees. The limitation under this**  
28 **sub-subparagraph does not apply to a bargaining unit certified or recognized prior to the ef-**  
29 **fective date of this 2024 Act.**

30 (B) Unless a labor organization and a public employer agree otherwise, [*the board*] may not  
31 designate as appropriate a bargaining unit that includes:

32 [(A)] (i) A faculty member described in ORS 243.650 [(23)(c)(C)] **(23)(c)(D)** who supervises one  
33 or more other faculty members; and

34 [(B)] (ii) Any faculty member who is supervised by a faculty member described in [*subparagraph*  
35 (A) of this paragraph] **sub-subparagraph (i) of this subparagraph.**

36 (b) **Shall** investigate and conduct a hearing on a petition that has been filed by:

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

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

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

45 (D) An employee or group of employees alleging that 30 percent of the employees assert that the

1 designated exclusive representative is no longer the representative of the majority of employees in  
2 the unit.

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

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

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

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

24 (C) Procedures to be used by the board to notify affected employees of the filing of a petition  
25 requesting certification under subsection (4) of this section;

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

29 (E) Procedures that may be used for preparing and signing authorizations designating bargaining  
30 representatives using an electronic record and an electronic signature, as those terms are defined  
31 in ORS 84.004; and

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

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

36 (3)(a) Except as otherwise provided in paragraph (b) of this subsection, a petition for represen-  
37 tation submitted as an electronic record that includes a signed authorization using an electronic  
38 signature as described under subsection (2)(b)(E) of this section must:

39 (A) Include the following information:

40 (i) The name of signer;

41 (ii) The signer's electronic mail address or social media account;

42 (iii) The signer's telephone number;

43 (iv) The exact language that the signer is assenting to by providing the electronic signature;

44 (v) The date of submission of the electronic signature; and

45 (vi) The name of the public employer that employs the signer; and

1 (B) Be accompanied by a verification declaration by the petitioning party:

2 (i) Specifying the technology used to obtain and verify the signatures;

3 (ii) Providing the methods used to ensure the authenticity of the signature; and

4 (iii) Confirming that the information transmitted to the signer was the same information to  
5 which the signer assented.

6 (b) If the technology used to provide the signed authorization does not support digital signatures  
7 that are suited to satisfy the requirements of the verification declaration described in paragraph (a)  
8 of this subsection, the petitioning party must submit evidence that, after the petitioning party ob-  
9 tained an electronic signature, the party promptly transmitted a confirmation transmission to the  
10 signer confirming that all of the information described under paragraph (a)(A)(i) to (vi) of this sub-  
11 section is true.

12 (4)(a) Notwithstanding subsection (2) of this section, when a petition requesting certification has  
13 been filed under subsection (2) of this section, an employee or a group of employees in the unit  
14 designated by the petition, or one or more of the unrepresented employees seeking to be added to  
15 an existing bargaining unit, may file a petition with the board to request that a representation  
16 election be conducted.

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

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

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

27 **SECTION 3. This 2024 Act being necessary for the immediate preservation of the public**  
28 **peace, health and safety, an emergency is declared to exist, and this 2024 Act takes effect**  
29 **on its passage.**

30