

Requested by Representative HELFRICH

**PROPOSED AMENDMENTS TO
HOUSE BILL 4115**

1 On page 1 of the printed bill, line 2, before the period insert “and 243.682;
2 and declaring an emergency”.

3 Delete lines 4 through 29 and delete pages 2 through 4 and insert:

4 **“SECTION 1.** ORS 243.650 is amended to read:

5 “243.650. As used in ORS 243.650 to 243.809, unless the context requires
6 otherwise:

7 “(1) ‘Appropriate bargaining unit’ means the unit designated by the Em-
8 ployment Relations Board or voluntarily recognized by the public employer
9 to be appropriate for collective bargaining. However, an appropriate bar-
10 gaining unit may not include both academically licensed and unlicensed or
11 nonacademically licensed school employees. Academically licensed units may
12 include but are not limited to teachers, nurses, counselors, therapists, psy-
13 chologists, child development specialists and similar positions. This limita-
14 tion does not apply to any bargaining unit certified or recognized prior to
15 June 6, 1995, or to any school district with fewer than 50 employees.

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

17 “(3) ‘Certification’ means official recognition by the board that a labor
18 organization is the exclusive representative for all of the employees in the
19 appropriate bargaining unit.

20 “(4) ‘Collective bargaining’ means the performance of the mutual obli-
21 gation of a public employer and the representative of its employees to meet

1 at reasonable times and confer in good faith with respect to employment re-
2 lations for the purpose of negotiations concerning mandatory subjects of
3 bargaining, to meet and confer in good faith in accordance with law with
4 respect to any dispute concerning the interpretation or application of a col-
5 lective bargaining agreement, and to execute written contracts incorporating
6 agreements that have been reached on behalf of the public employer and the
7 employees in the bargaining unit covered by such negotiations. The obli-
8 gation to meet and negotiate does not compel either party to agree to a
9 proposal or require the making of a concession. This subsection may not be
10 construed to prohibit a public employer and a certified or recognized repre-
11 sentative of its employees from discussing or executing written agreements
12 regarding matters other than mandatory subjects of bargaining that are not
13 prohibited by law as long as there is mutual agreement of the parties to
14 discuss these matters, which are permissive subjects of bargaining.

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

18 “(6) ‘Confidential employee’ means one who assists and acts in a confi-
19 dential capacity to a person who formulates, determines and effectuates
20 management policies in the area of collective bargaining.

21 “(7)(a) ‘Employment relations’ includes, but is not limited to, matters
22 concerning direct or indirect monetary benefits, hours, vacations, sick leave,
23 labor organization access to and communication with represented employees,
24 grievance procedures and other conditions of employment.

25 “(b) ‘Employment relations’ does not include subjects determined to be
26 permissive, nonmandatory subjects of bargaining by the Employment Re-
27 lations Board prior to June 6, 1995.

28 “(c) After June 6, 1995, ‘employment relations’ does not include subjects
29 that the Employment Relations Board determines to have a greater impact
30 on management’s prerogative than on employee wages, hours, or other terms

1 and conditions of employment.

2 “(d) ‘Employment relations’ does not include subjects that have an in-
3 substantial or de minimis effect on public employee wages, hours, and other
4 terms and conditions of employment.

5 “(e) For school district bargaining:

6 “(A) ‘Employment relations’ includes class size and caseload limits in
7 schools that qualify for assistance under Title I of the federal Elementary
8 and Secondary Education Act of 1965.

9 “(B) ‘Employment relations’ excludes the school or educational calendar,
10 standards of performance or criteria for evaluation of teachers, the school
11 curriculum, reasonable dress, grooming and at-work personal conduct re-
12 quirements respecting smoking, gum chewing and similar matters of personal
13 conduct, the standards and procedures for student discipline, the time be-
14 tween student classes, the selection, agendas and decisions of 21st Century
15 Schools Councils established under ORS 329.704, requirements for expressing
16 milk under ORS 653.077, and any other subject proposed that is permissive
17 under paragraphs (b), (c) and (d) of this subsection.

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

23 “(g) For all other employee bargaining except school district bargaining
24 and except as provided in paragraph (f) of this subsection, ‘employment re-
25 lations’ excludes staffing levels and safety issues (except those staffing levels
26 and safety issues that have a direct and substantial effect on the on-the-job
27 safety of public employees), scheduling of services provided to the public,
28 determination of the minimum qualifications necessary for any position, cri-
29 teria for evaluation or performance appraisal, assignment of duties, workload
30 when the effect on duties is insubstantial, reasonable dress, grooming, and

1 at-work personal conduct requirements respecting smoking, gum chewing,
2 and similar matters of personal conduct at work, and any other subject pro-
3 posed that is permissive under paragraphs (b), (c) and (d) of this subsection.

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

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

12 “(10) ‘Fair-share agreement’ means an agreement between the public em-
13 ployer and the recognized or certified bargaining representative of public
14 employees whereby employees who are not members of the employee organ-
15 ization are required to make an in-lieu-of-dues payment to an employee or-
16 ganization except as provided in ORS 243.666. Upon the filing with the board
17 of a petition by 30 percent or more of the employees in an appropriate bar-
18 gaining unit covered by such union security agreement declaring they desire
19 that the agreement be rescinded, the board shall take a secret ballot of the
20 employees in the unit and certify the results thereof to the recognized or
21 certified bargaining representative and to the public employer. Unless a
22 majority of the votes cast in an election favor the union security agreement,
23 the board shall certify deauthorization of the agreement. A petition for de-
24 authorization of a union security agreement must be filed not more than 90
25 calendar days after the collective bargaining agreement is executed. Only
26 one such election may be conducted in any appropriate bargaining unit dur-
27 ing the term of a collective bargaining agreement between a public employer
28 and the recognized or certified bargaining representative.

29 “(11) ‘Final offer’ means the proposed contract language and cost sum-
30 mary submitted to the mediator within seven days of the declaration of im-

1 passe.

2 “(12) ‘Labor dispute’ means any controversy concerning employment re-
3 lations or concerning the association or representation of persons in negoti-
4 ating, fixing, maintaining, changing, or seeking to arrange terms or
5 conditions of employment relations, regardless of whether the disputants
6 stand in the proximate relation of employer and employee.

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

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

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

16 “(16) ‘Managerial employee’ means an employee of the State of Oregon
17 or a public university listed in ORS 352.002 who possesses authority to for-
18 mulate and carry out management decisions or who represents management’s
19 interest by taking or effectively recommending discretionary actions that
20 control or implement employer policy, and who has discretion in the per-
21 formance of these management responsibilities beyond the routine discharge
22 of duties. A ‘managerial employee’ need not act in a supervisory capacity in
23 relation to other employees. Notwithstanding this subsection, ‘managerial
24 employee’ does not include faculty members at a community college, college
25 or university.

26 “(17) ‘Mediation’ means assistance by an impartial third party in recon-
27 ciling a labor dispute between the public employer and the exclusive repre-
28 sentative regarding employment relations.

29 “(18) ‘Payment-in-lieu-of-dues’ means an assessment to defray the cost for
30 services by the exclusive representative in negotiations and contract admin-

1 istration of all persons in an appropriate bargaining unit who are not mem-
2 bers of the organization serving as exclusive representative of the employees.
3 The payment must be equivalent to regular union dues and assessments, if
4 any, or must be an amount agreed upon by the public employer and the ex-
5 clusive representative of the employees.

6 “(19) ‘Public employee’ means an employee of a public employer but does
7 not include elected officials, persons appointed to serve on boards or com-
8 missions, incarcerated persons working under Article I, section 41, of the
9 Oregon Constitution, or persons who are confidential employees, supervisory
10 employees or managerial employees.

11 “(20) ‘Public employer’ means the State of Oregon, and the following
12 political subdivisions: Cities, counties, community colleges, school districts,
13 special districts, mass transit districts, metropolitan service districts, public
14 service corporations or municipal corporations and public and quasi-public
15 corporations.

16 “(21) ‘Public employer representative’ includes any individual or individ-
17 uals specifically designated by the public employer to act in its interests in
18 all matters dealing with employee representation, collective bargaining and
19 related issues.

20 “(22) ‘Strike’ means a public employee’s refusal in concerted action with
21 others to report for duty, or his or her willful absence from his or her posi-
22 tion, or his or her stoppage of work, or his or her absence in whole or in
23 part from the full, faithful or proper performance of his or her duties of
24 employment, for the purpose of inducing, influencing or coercing a change
25 in the conditions, compensation, rights, privileges or obligations of public
26 employment; however, nothing shall limit or impair the right of any public
27 employee to lawfully express or communicate a complaint or opinion on any
28 matter related to the conditions of employment.

29 “(23)(a) ‘Supervisory employee’ means any individual having authority in
30 the interest of the employer to hire, transfer, suspend, lay off, recall, pro-

1 mote, discharge, assign, reward or discipline other employees, or responsibly
2 to direct them, or to adjust their grievances, or effectively to recommend
3 such action, if in connection therewith, the exercise of the authority is not
4 of a merely routine or clerical nature but requires the use of independent
5 judgment. Failure to assert supervisory status in any Employment Relations
6 Board proceeding or in negotiations for any collective bargaining agreement
7 does not thereafter prevent assertion of supervisory status in any subsequent
8 board proceeding or contract negotiation.

9 “(b) ‘Supervisory employee’ includes:

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

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

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

16 “(B) **A guard at a correctional institution or mental hospital or a**
17 **police officer who serves in the rank of lieutenant or higher except for**
18 **those lieutenant guards or police officers who were included in an ap-**
19 **propriate bargaining unit for purposes of collective bargaining on or**
20 **before the effective date of this 2024 Act.**

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

22 “(A) A nurse, charge nurse or nurse holding a similar position if that
23 position has not traditionally been classified as supervisory;

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

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

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

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

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

5 “[(C)] (D) A faculty member of a public university listed in ORS 352.002
6 or the Oregon Health and Science University who is not a faculty member
7 described in paragraph (b) of this subsection; 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
12 not hire, discharge or impose economic discipline on those employees.

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

15 “(25) ‘Voluntary arbitration’ means the procedure whereby parties in-
16 volved in a labor dispute mutually agree to submit their differences to a
17 third party for a final and binding decision.

18 “**SECTION 2.** ORS 243.682 is amended to read:

19 “243.682. (1) If a question of representation exists, the Employment Re-
20 lations Board [*shall*]:

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

28 “(ii) **May not designate as appropriate a bargaining unit that in-**
29 **cludes both guards at a correctional institution or mental hospital or**
30 **police officers who serve in a rank equivalent to the rank of sergeant**

1 **and rank-and-file subordinate employees. The limitation under this**
2 **sub-subparagraph does not apply to a bargaining unit certified or re-**
3 **recognized prior to the effective date of this 2024 Act.**

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

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

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

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

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

16 “(B) A labor organization alleging that 30 percent of the employees in an
17 appropriate bargaining unit assert that the designated exclusive represen-
18 tative is no longer the representative of the majority of the employees in the
19 unit;

20 “(C) A public employer alleging that one or more labor organizations has
21 presented a claim to the public employer requesting recognition as the ex-
22 clusive representative in an appropriate bargaining unit; or

23 “(D) An employee or group of employees alleging that 30 percent of the
24 employees assert that the designated exclusive representative is no longer
25 the representative of the majority of employees in the unit.

26 “(2)(a) Notwithstanding subsection (1) of this section, when an employee,
27 group of employees or labor organization acting on behalf of the employees
28 files a petition alleging that a majority of employees in a unit appropriate
29 for the purpose of collective bargaining wish to be represented by a labor
30 organization for that purpose, or when a labor organization files a petition

1 alleging that the majority in a group of unrepresented employees seek to be
2 added to an existing bargaining unit, the board shall investigate the petition.
3 If the board finds that a majority of the employees in a unit appropriate for
4 bargaining or a majority of employees in a group of unrepresented employees
5 that is appropriate to add to an existing bargaining unit have signed au-
6 thorizations designating the labor organization specified in the petition as
7 the employees' bargaining representative and that no other labor organiza-
8 tion is currently certified or recognized as the exclusive representative of
9 any of the employees in the unit or in the group of unrepresented employees
10 seeking to be added to an existing bargaining unit, the board may not con-
11 duct an election but shall certify the labor organization as the exclusive
12 representative unless a petition for a representation election is filed as pro-
13 vided in subsection (4) of this section.

14 “(b) The board by rule shall develop guidelines and procedures for the
15 designation by employees of a bargaining representative in the manner de-
16 scribed in paragraph (a) of this subsection. The guidelines and procedures
17 must include:

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

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

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

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

30 “(E) Procedures that may be used for preparing and signing authori-

1 zations designating bargaining representatives using an electronic record and
2 an electronic signature, as those terms are defined in ORS 84.004; and

3 “(F) Procedures for expedited resolution of any dispute about the scope
4 of the appropriate bargaining unit. The resolution of the dispute may occur
5 after an election is conducted.

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

8 “(3)(a) Except as otherwise provided in paragraph (b) of this subsection,
9 a petition for representation submitted as an electronic record that includes
10 a signed authorization using an electronic signature as described under
11 subsection (2)(b)(E) of this section must:

12 “(A) Include the following information:

13 “(i) The name of signer;

14 “(ii) The signer’s electronic mail address or social media account;

15 “(iii) The signer’s telephone number;

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

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

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

20 “(B) Be accompanied by a verification declaration by the petitioning
21 party:

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

23 “(ii) Providing the methods used to ensure the authenticity of the signa-
24 ture; and

25 “(iii) Confirming that the information transmitted to the signer was the
26 same information to which the signer assented.

27 “(b) If the technology used to provide the signed authorization does not
28 support digital signatures that are suited to satisfy the requirements of the
29 verification declaration described in paragraph (a) of this subsection, the
30 petitioning party must submit evidence that, after the petitioning party ob-

1 tained an electronic signature, the party promptly transmitted a confirmation
2 transmission to the signer confirming that all of the information described
3 under paragraph (a)(A)(i) to (vi) of this subsection is true.

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

10 “(b) The petition requesting a representation election must be supported
11 by at least 30 percent of the employees in the bargaining unit designated by
12 the petition, or 30 percent of the unrepresented employees seeking to be
13 added to an existing bargaining unit.

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

16 “(5) Except as provided in ORS 243.692, if the board finds in a hearing
17 conducted pursuant to subsection (1)(b) of this section that a question of
18 representation exists, the board shall conduct an election by secret ballot,
19 at a time and place convenient for the employees of the jurisdiction and also
20 within a reasonable period of time after the filing has taken place, and cer-
21 tify the results of the election.

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

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