

HB 4115-2
(LC 37)
2/9/24 (JAS/ps)

Requested by HOUSE COMMITTEE ON BUSINESS AND LABOR (at the request of Department of Justice)

**PROPOSED AMENDMENTS TO
HOUSE BILL 4115**

1 On page 1 of the printed bill, delete lines 4 through 29 and delete pages
2 2 through 4 and insert:

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

4 “243.650. As used in ORS 243.650 to 243.809, unless the context requires
5 otherwise:

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

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

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

19 “(4) ‘Collective bargaining’ means the performance of the mutual obli-
20 gation of a public employer and the representative of its employees to meet
21 at reasonable times and confer in good faith with respect to employment re-

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

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

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

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

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

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

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

4 “(e) For school district bargaining:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 “(18) ‘Payment-in-lieu-of-dues’ means an assessment to defray the cost for
29 services by the exclusive representative in negotiations and contract admin-
30 istration of all persons in an appropriate bargaining unit who are not mem-

1 bers of the organization serving as exclusive representative of the employees.
2 The payment must be equivalent to regular union dues and assessments, if
3 any, or must be an amount agreed upon by the public employer and the ex-
4 clusive representative of the employees.

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

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

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

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

28 “(23)(a) ‘Supervisory employee’ means any individual having authority in
29 the interest of the employer to hire, transfer, suspend, lay off, recall, pro-
30 mote, discharge, assign, reward or discipline other employees, or responsibly

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

8 “(b) ‘Supervisory employee’ includes:

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

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

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

15 “(B) **An employee of the Criminal Justice Division of the Depart-**
16 **ment of Justice who manages police officers of the division.**

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

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

20 “(B) A firefighter, **an emergency communications worker, a guard**
21 **at a correctional institution or mental hospital or a police officer** pro-
22 hibited from striking by ORS 243.736 who assigns, transfers or directs the
23 work of other employees but does not have the authority to hire, discharge
24 or impose economic discipline on those employees;

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

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

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

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

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

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

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

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