

B-Engrossed House Bill 2944

Ordered by the Senate May 16
Including House Amendments dated April 14 and Senate Amendments
dated May 16

Sponsored by Representative NELSON, Senators GORSEK, MANNING JR; Representatives ANDERSEN,
FRAGALA, MUNOZ, TRAN (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 makes changes to the PECBA. The Act creates penalties for violating certain provisions of the PECBA. (Flesch Readability Score: 61.4).

Directs the Employment Relations Board to impose civil penalties against a public employer that has a history of failing to comply with certain requirements under the Public Employee Collective Bargaining Act. **Provides that a violation resulting from certain events is not subject to a civil penalty.**

Permits the board to consider extenuating circumstances when determining the amount of the civil penalty to impose.

A BILL FOR AN ACT

1
2 Relating to penalties for failure to comply with certain requirements under the laws governing
3 public employee collective bargaining; amending ORS 243.676 and 243.806.

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

5 **SECTION 1.** ORS 243.676 is amended to read:

6 243.676. (1) Whenever a written complaint is filed alleging that any person has engaged in or is
7 engaging in any unfair labor practice listed in ORS 243.672 (1) to (4) and 243.752, the Employment
8 Relations Board or its agent shall:

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

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

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

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

20 (a) State its findings of fact;

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

23 (c) Take such affirmative action, including but not limited to the reinstatement of employees

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 with or without back pay, as necessary to effectuate the purposes of ORS 240.060, 240.065, 240.080,
2 240.123, 243.650 to 243.809 and 341.290;

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

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

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

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

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

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

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

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

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

24 **(c)(A) Notwithstanding paragraph (a) of this subsection, but subject to subparagraph (C)**
25 **of this paragraph, if the board finds that the public employer named in the complaint has**
26 **violated ORS 243.804 (4) or 243.806 (7) and that the employer has previously violated either**
27 **provision, the board shall impose a civil penalty of not less than \$1,000 nor more than \$5,000.**
28 **For any subsequent violation, the board shall impose a civil penalty of not less than \$5,000**
29 **nor more than \$10,000.**

30 **(B) In determining the amount of the civil penalty to impose under this paragraph, the**
31 **board shall consider extenuating circumstances that the employer has proven contributed**
32 **to or caused the violation. An extenuating circumstance is not an affirmative defense to a**
33 **violation described in subparagraph (A) of this paragraph.**

34 **(C) A finding of a violation under subparagraph (A) of this paragraph is not subject to a**
35 **civil penalty under subparagraph (A) of this paragraph if the employer establishes that the**
36 **violation resulted directly from:**

37 **(i) A natural disaster, as defined in ORS 197.488;**

38 **(ii) A computer crime, as defined in ORS 164.377; or**

39 **(iii) Destruction by fire, flood, or other catastrophic event at the employer's place of**
40 **business that significantly disrupted the public employer's operations relating to the vio-**
41 **lation.**

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

44 **SECTION 2.** ORS 243.806 is amended to read:

45 243.806. (1) A public employee may enter into an agreement with a labor organization that is the

1 exclusive representative to provide authorization for a public employer to make a deduction from
2 the salary or wages of the public employee, in the manner described in subsection (4) of this section,
3 to pay dues, fees and any other assessments or authorized deductions to the labor organization or
4 its affiliated organizations or entities.

5 (2) A public employer shall deduct the dues, fees and any other deduction authorized by a public
6 employee under this section and remit payment to the designated organization or entity.

7 (3)(a) In addition to making the deductions and payments to a labor organization or entity de-
8 scribed in subsection (1) of this section, a public employer shall make deductions for and payments
9 to a noncertified, yet bona fide, labor organization, if so requested and authorized by a public em-
10 ployee, in the manner described in subsection (4) of this section.

11 (b) The deductions and payments made in accordance with this subsection shall not be deemed
12 an unfair labor practice under ORS 243.672.

13 (4)(a) A public employee may provide authorization for the deductions described in this section
14 by telephonic communication or in writing, including by an electronic record or electronic signature,
15 as those terms are defined in ORS 84.004.

16 (b) A public employee's authorization is independent of the employee's membership status in the
17 labor organization to which payment is remitted and irrespective of whether a collective bargaining
18 agreement authorizes the deduction.

19 (5) Notwithstanding subsections (1) to (4) of this section, a collective bargaining agreement be-
20 tween a labor organization and a public employer may authorize a public employer to make a de-
21 duction from the salary or wages of a public employee who is a member of the labor organization
22 to pay dues, fees or other assessments to the labor organization or its affiliated organizations or
23 entities.

24 (6) A public employee's authorization for a public employer to make a deduction under sub-
25 sections (1) to (4) of this section shall remain in effect until the public employee revokes the au-
26 thorization in the manner provided by the terms of the agreement. If the terms of the agreement do
27 not specify the manner in which a public employee may revoke the authorized deduction, a public
28 employee may revoke authorization for the deduction by delivering an original signed, written
29 statement of revocation to the headquarters of the labor organization.

30 (7) A labor organization shall provide to each public employer a list identifying the public em-
31 ployees who have provided authorization for a public employer to make deductions from the public
32 employee's salary or wages to pay dues, fees and any other assessments or authorized deductions
33 to the labor organization. A public employer shall rely on the list to make the authorized deductions
34 and to remit payment to the labor organization[.] **within a time period that aligns with a payroll**
35 **processing schedule established by the employer not to exceed 30 calendar days following the**
36 **date of the deduction.**

37 (8)(a) Notwithstanding subsection (10) of this section, a public employer that makes deductions
38 and payments in reliance on the list described in subsection (7) of this section is not liable to a
39 public employee for actual damages resulting from an unauthorized deduction.

40 (b) A labor organization that receives payment from a public employer shall defend and indem-
41 nify the public employer for the amount of any unauthorized deduction resulting from the public
42 employer's reliance on the list.

43 (9) If a labor organization provides a public employer with the list described in subsection (7)
44 of this section and the employer fails to make an authorized deduction and remit payment to the
45 labor organization, the public employer is liable to the labor organization, without recourse against

1 the employee who authorized the deduction, for the full amount that the employer failed to deduct
2 and remit to the labor organization.

3 (10)(a) If a dispute arises between the public employee and the labor organization regarding the
4 existence, validity or revocation of an authorization for the deductions and payment described under
5 subsections (1) and (2) of this section, the dispute shall be resolved through an unfair labor practice
6 proceeding under ORS 243.672.

7 (b) A public employer that makes unauthorized deductions or a labor organization that receives
8 payment in violation of the requirements of this section is liable to the public employee for actual
9 damages in an amount not to exceed the amount of the unauthorized deductions.

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