

HB 4011-1
(LC 141)
2/26 (JAS/ps)

Requested by HOUSE COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT (at the request of Oregon Education Association)

**PROPOSED AMENDMENTS TO
HOUSE BILL 4011**

1 On page 1 of the printed bill, delete lines 4 through 29 and delete pages
2 2 through 5 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 and*
7 **Secondary Education Act of 1965] and the standards and procedures for**
8 **student discipline that have a direct and substantial effect on the on-**
9 **the-job safety of school district employees.**

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

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

26 “(g) For all other employee bargaining except school district bargaining
27 and except as provided in paragraph (f) of this subsection, ‘employment re-
28 lations’ excludes staffing levels and safety issues (except those staffing levels
29 and safety issues that have a direct and substantial effect on the on-the-job
30 safety of public employees), scheduling of services provided to the public,

1 determination of the minimum qualifications necessary for any position, cri-
2 teria for evaluation or performance appraisal, assignment of duties, workload
3 when the effect on duties is insubstantial, reasonable dress, grooming, and
4 at-work personal conduct requirements respecting smoking, gum chewing,
5 and similar matters of personal conduct at work, and any other subject pro-
6 posed that is permissive under paragraphs (b), (c) and (d) of this subsection.

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

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

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

1 and the recognized or certified bargaining representative.

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

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

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

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

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

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

29 “(17) ‘Mediation’ means assistance by an impartial third party in recon-
30 ciling a labor dispute between the public employer and the exclusive repre-

1 sentative regarding employment relations.

2 “(18) ‘Payment-in-lieu-of-dues’ means an assessment to defray the cost for
3 services by the exclusive representative in negotiations and contract admin-
4 istration of all persons in an appropriate bargaining unit who are not mem-
5 bers of the organization serving as exclusive representative of the employees.
6 The payment must be equivalent to regular union dues and assessments, if
7 any, or must be an amount agreed upon by the public employer and the ex-
8 clusive representative of the employees.

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

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

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

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

1 matter related to the conditions of employment.

2 “(23)(a) ‘Supervisory employee’ means any individual having authority in
3 the interest of the employer to hire, transfer, suspend, lay off, recall, pro-
4 mote, discharge, assign, reward or discipline other employees, or responsibly
5 to direct them, or to adjust their grievances, or effectively to recommend
6 such action, if in connection therewith, the exercise of the authority is not
7 of a merely routine or clerical nature but requires the use of independent
8 judgment. Failure to assert supervisory status in any Employment Relations
9 Board proceeding or in negotiations for any collective bargaining agreement
10 does not thereafter prevent assertion of supervisory status in any subsequent
11 board proceeding or contract negotiation.

12 “(b) ‘Supervisory employee’ includes:

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

15 “(i) Is employed as a president, vice president, provost, vice provost, dean,
16 associate dean, assistant dean, head or equivalent position; or

17 “(ii) Is employed in an administrative position without a reasonable ex-
18 pectation of teaching, research or other scholarly accomplishments.

19 “(B) A guard at a correctional institution or mental hospital or a police
20 officer who serves in the rank of lieutenant or higher except for those lieu-
21 tenant guards or police officers who were included in an appropriate bar-
22 gaining unit for purposes of collective bargaining on or before April 4, 2024.

23 “(C) An employee of the Criminal Justice Division of the Department of
24 Justice who manages police officers of the division.

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

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

28 “(B) A firefighter or an emergency communications worker prohibited
29 from striking by ORS 243.736 who assigns, transfers or directs the work of
30 other employees but does not have the authority to hire, discharge or impose

1 economic discipline on those employees;

2 “(C) A guard at a correctional institution or mental hospital or a police

3 officer who:

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

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

6 “(iii) Assigns, transfers or directs the work of other employees but does

7 not have the authority to hire, discharge or impose economic discipline on

8 those employees;

9 “(D) A faculty member of a public university listed in ORS 352.002 or the

10 Oregon Health and Science University who is not a faculty member described

11 in paragraph (b) of this subsection; or

12 “(E) An employee of the Oregon State Police who:

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

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

15 “(iii) Assigns, transfers or directs the work of other employees but does

16 not hire, discharge or impose economic discipline on those employees.

17 “(24) ‘Unfair labor practice’ means the commission of an act designated

18 an unfair labor practice in ORS 243.672.

19 “(25) ‘Voluntary arbitration’ means the procedure whereby parties in-

20 volved in a labor dispute mutually agree to submit their differences to a

21 third party for a final and binding decision.”.

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