

SB 1567 A STAFF MEASURE SUMMARY**Carrier:** Sen. Olsen**Senate Committee On Judiciary****Minority Report****Action Date:** 02/12/20**Action:** Do pass with different amendments. (Printed A-Eng.) Minority**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Report Signers:** Sen. Alan Olsen, Sen. Dennis Linthicum**Prepared By:** Channa Newell, Counsel**Meeting Dates:** 2/10, 2/12**WHAT THE MEASURE DOES:**

Requires all collective bargaining agreements entered into on or after January 1, 2021, to contain new standard for arbitration awards that include disciplinary action. Makes decisions by arbitrator final and binding if decision is made within scope and terms of collective bargaining agreement. Removes alternative dispute resolution processes that are not binding arbitration. Specifies that arbitrator must determine whether just cause exists for imposing disciplinary action and requires consideration of six factors: 1) whether employer provided employee with notice of consequences of conduct; 2) whether the rules or policy are reasonably related to the employer's business efficiency and performance that an employer may expect from an employee; 3) whether the employer had conducted an investigation or inquiry in an impartial and objective manner before taking disciplinary action; 4) whether the employer obtained substantial evidence to support a finding of misconduct; 5) whether the employer's disciplinary action was applied in a consistent and nondiscriminatory manner; and 6) whether the degree of discipline was reasonably related to the seriousness of the employee's misconduct and the employee's past conduct. Allows alternative standards for arbitrator to impose discipline so long as standard was agreed to as part of collective bargaining process and included in the agreement, and the standard requires consideration of whether the employer conducted an inquiry or investigation that are consistent with constitutional due process principles, and whether the degree of disciplinary action imposed by the public employer is reasonably related and proportional to the seriousness of the employee's misconduct. Allows discipline imposed upon law enforcement officers, pursuant to a grid or matrix, to be modified by arbitrator so long as discipline meets just cause standard and is consistent with guide or matrix. Requires cost of representation in arbitration to be born equally by the parties. Makes denial of future use of arbitrator based on lawful arbitration award an unlawful employment practice. Makes denial of employee's access to fair and impartial arbitration process an unlawful employment practice. Makes discrimination or retaliation against employee for participation in arbitration process an unlawful employment practice. Allows complaint with Bureau of Labor and Industries, unless complaint filed with Employment Relations Board. Allows civil action based on unlawful employment practice. Requires all law enforcement agencies in cities with population exceeding 100,000 to submit annual report to Legislative Assembly no later than January 15 of each year. Requires report to include description of how disciplinary policies conform to just cause standard, a description of how disciplinary policies were applied to cases in prior calendar year, an account of disciplinary actions: initiated against law enforcement officers; sent to arbitration; outcomes of arbitration; and total marginal costs incurred by law enforcement for arbitration awards. Makes personal information of arbitrator, including residential address, telephone number, and personal contact information, conditionally exempt from disclosure under ORS 192.345. Applies this provision to public records requests made on or after July 1, 2021; repeals July 1, 2022. Makes personally identifiable information collected in course of required annual report conditionally exempt from public records disclosure, unless public interest requires disclosure in particular case. Applies this provision to record requests made on or after January 1, 2021; repeals January 1, 2022. Requires Employment Relations Board to adopt rules establishing minimum qualifications of arbitrator. Declares that public employees have the right to decide the terms of their employment through free

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will and collective bargaining. Declares that comprehensive and fair collective bargaining process includes consideration of terms regarding arbitrating employer discipline. Declares collective bargaining must proceed without undue influence from Legislative Assembly.

ISSUES DISCUSSED:

- Minimizing legislative changes to collective bargaining agreements
- Need for police accountability
- Employee rights to know what disciplinary action will be incurred for specific conduct
- Use of mitigating circumstances when imposing discipline

EFFECT OF AMENDMENT:

Replaces measure.

BACKGROUND:

Many state and local government employees, including employees of states, counties, cities, and school districts, are subject to the Public Employee Collective Bargaining Act (PECBA). Law enforcement officers are covered under PECBA. A public employer and a collective bargaining unit may reach a written agreement on grievance procedures. As a condition of enforceability, an arbitration award that orders the reinstatement of public employee or otherwise relieves the employee of responsibility for misconduct must comply with clearly defined public policy in statute or judicial decisions. Resolution of disputes over conditions and terms of a contract may be resolved through binding arbitration.

Senate Bill 1567-MRA provides a just cause standard for binding arbitration involving a public employer and public employees subject to a collective bargaining agreement and declares the policy of the state is that, "Public employees have the right to decide by their free will and desire to collectively bargain the terms of their employment." The measure removes authority to enter into an agreement that includes a dispute resolution process. For any measure imposing discipline, the arbitrator must determine whether just cause exists to issue an award imposing discipline and must consider six factors: 1) whether the employer provided the employee with notice of consequences of the conduct; 2) whether the rules or policy are reasonably related to the employer's business efficiency and performance that an employer may expect from an employee; 3) whether the employer had conducted an investigation or inquiry in an impartial and objective manner before taking disciplinary action; 4) whether the employer obtained substantial evidence to support a finding of misconduct; 5) whether the employer's disciplinary action was applied in a consistent and nondiscriminatory manner; and 6) whether the degree of discipline was reasonably related to the seriousness of the employee's misconduct and the employee's past conduct. In instances in which a standard other than the just cause standard has been agreed to in collective bargaining, an arbitrator may impose disciplinary action if the disciplinary standard was included in the collective bargaining agreement and the standard requires the arbitrator to consider: 1) whether the employer conducted an inquiry or investigation using methods consistent with constitutional due process principles; and 2) whether the degree of disciplinary action imposed by the public employer is reasonably related and proportional to the seriousness of the employee's misconduct.

SB 1567-MRA also requires all law enforcement agencies in cities with population over 100,000 to submit an annual report to the Legislative Assembly describing the disciplinary policies and procedures included in collective bargaining agreements; a description of how the disciplinary policies and procedures were applied in the prior calendar year; and an accounting of the number of disciplinary actions that the agency initiated against officer employees, that were sent to arbitration, the outcome of arbitration, and the total marginal cost of arbitration awards incurred in the prior year by the agency.