

Requested by Representative BARKER

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 1567**

1 On page 1 of the printed A-engrossed bill, delete lines 5 through 22.

2 On page 2, delete lines 1 through 42 and insert:

3 **SECTION 1.** ORS 243.706 is amended to read:

4 “243.706. (1) A public employer may enter into a written agreement with
5 the exclusive representative of an appropriate bargaining unit setting forth
6 a grievance procedure culminating in binding arbitration or any other dis-
7 pute resolution process agreed to by the parties. As a condition of
8 enforceability, any arbitration award that orders the reinstatement of a
9 public employee or otherwise relieves the public employee of responsibility
10 for misconduct shall comply with public policy requirements as clearly de-
11 fined in statutes or judicial decisions including but not limited to policies
12 respecting sexual harassment or sexual misconduct, unjustified and egregious
13 use of physical or deadly force and serious criminal misconduct, related to
14 work. In addition, with respect to claims that a grievant should be reinstated
15 or otherwise relieved of responsibility for misconduct based upon the public
16 employer’s alleged previous differential treatment of employees for the same
17 or similar conduct, the arbitration award must conform to the following
18 principles:

19 “(a) Some misconduct is so egregious that no employee can reasonably
20 rely on past treatment for similar offenses as a justification or defense to
21 discharge or other discipline.

1 “(b) Public managers have a right to change disciplinary policies at any
2 time, notwithstanding prior practices, if such managers give reasonable ad-
3 vance notice to affected employees and the change does not otherwise violate
4 a collective bargaining agreement.

5 “(2) In addition to subsection (1) of this section, a public employer may
6 enter into a written agreement with the exclusive representative of its em-
7 ployees providing that a labor dispute over conditions and terms of a con-
8 tract may be resolved through binding arbitration.

9 **“(3) Notwithstanding subsection (1) of this section, when an arbi-
10 tration proceeding involves alleged misconduct by a law enforcement
11 officer of any law enforcement agency, as those terms are defined in
12 ORS 131.930, and the law enforcement agency imposes disciplinary
13 action pursuant to a discipline guide or discipline matrix that is in-
14 cluded in the terms of the collective bargaining agreement, the
15 arbitrator may rescind or reduce the disciplinary action imposed by
16 the law enforcement agency by issuing a written arbitration award:**

17 **“(a) That is consistent with the provisions of the disciplinary guide
18 or discipline matrix that is included in the terms of the collective
19 bargaining agreement; and**

20 **“(b) That is based on mitigating circumstances consistent with just
21 cause.**

22 “[3] (4) In an arbitration proceeding under this section, the arbitrators,
23 or a majority of the arbitrators, may:

24 “(a) Issue subpoenas on their own motion or at the request of a party to
25 the proceeding to:

26 “(A) Compel the attendance of a witness properly served by either party;
27 and

28 “(B) Require from either party the production of books, papers and docu-
29 ments the arbitrators find are relevant to the proceeding;

30 “(b) Administer oaths or affirmations to witnesses; and

1 “(c) Adjourn a hearing from day to day, or for a longer time, and from
2 place to place.

3 “[4] (5) The arbitrators shall promptly provide a copy of a subpoena is-
4 sued under this section to each party to the arbitration proceeding.

5 “[5] (6) The arbitrators issuing a subpoena under this section may rule
6 on objections to the issuance of the subpoena.

7 “[6] (7) If a person fails to comply with a subpoena issued under this
8 section or if a witness refuses to testify on a matter on which the witness
9 may be lawfully questioned, the party who requested the subpoena or seeks
10 the testimony may apply to the arbitrators for an order authorizing the party
11 to apply to the circuit court of any county to enforce the subpoena or compel
12 the testimony. On the application of the attorney of record for the party or
13 on the application of the arbitrators, or a majority of the arbitrators, the
14 court may require the person or witness to show cause why the person or
15 witness should not be punished for contempt of court to the same extent and
16 purpose as if the proceedings were pending before the court.

17 “[7] (8) Witnesses appearing pursuant to subpoena, other than parties
18 or officers or employees of the public employer, shall receive fees and mile-
19 age as prescribed by law for witnesses in ORS 44.415 (2).

20 “(9) **As used in this section:**

21 “(a) **‘Discipline guide’ means a grid that is designed to provide pa-**
22 **rameters for the level of discipline to be imposed for an act of mis-**
23 **conduct that is categorized by the severity of the misconduct and take**
24 **into account the presumptive level of discipline for the misconduct and**
25 **any aggravating or mitigating factors.**

26 “(b) **‘Discipline matrix’ means a grid used to determine the level**
27 **of discipline to be imposed for an act of misconduct that is categorized**
28 **by the severity of the misconduct, according to the intersection where**
29 **the category of misconduct and the level of disciplinary action meet.**

30 “(c) **‘Just cause’ has the meaning given that term in ORS 236.350.”.**

1 On page 9, delete lines 42 through 44 and insert:

2 **“SECTION 4. The amendments to ORS 243.650 and 243.706 by**
3 **sections 1 to 3 of this 2020 Act apply to collective bargaining agree-**
4 **ments negotiated and entered into on or after the effective date of this**
5 **2020 Act.”.**

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