

HB 2930 A STAFF MEASURE SUMMARY

House Committee On Judiciary

Action Date: 04/06/21

Action: Do pass with amendments and be referred to Ways and Means. (Printed A-Eng.)

Vote: 10-0-0-0

Yeas: 10 - Bynum, Dexter, Helm, Kropf, Lewis, Morgan, Noble, Power, Wallan, Wilde

Fiscal: Fiscal impact issued

Revenue: No revenue impact

Prepared By: Amie Fender-Sosa, Counsel

Meeting Dates: 2/22, 3/17, 3/22, 3/31, 4/6

WHAT THE MEASURE DOES:

Removes discipline matrix or discipline guide as a mandatory subject of collective bargaining for law enforcement. Establishes the Commission on Statewide Law Enforcement Standards of Conduct and Discipline (Commission) for the purpose of adopting statewide uniform rules through a public process for law enforcement standards of conduct and disciplinary standards. Specifies membership and includes representation from groups that will be impacted by the rules adopted by the Commission. Requires the Commission to establish an open hearing process for public input and deliberation before the Commission adopts the rules that will set the conduct and disciplinary standards. Specifies that the open hearing process must include public notice, public outreach, and public hearings. Requires the Employment Relations Board (ERB) to appoint an arbitrator from a list of qualified, indifferent, unbiased arbitrators. Allows each party an opportunity to object to the ERB's appointed arbitrator. Requires law enforcement agencies and arbitrators presiding over alleged misconduct cases to make discipline determinations that adhere to the rules adopted by the Commission. Requires that the standard arbitrators apply in police discipline cases be just cause, as defined in ORS 236.350. Defines "just cause" as a cause reasonably related to the public safety officer's ability to perform required work. The term includes a willful violation of reasonable work rules, regulations, or written policies. Sets the standard of evidence at preponderance of the evidence. Requires the employer to show: (1) the officer engaged in misconduct, and (2) the discipline met the statutory just cause standard. Requires the arbitrator, when determining the reasonableness of the disciplinary action imposed by an agency, to uphold the discipline unless it is arbitrary and capricious. Prohibits arbitrator from overturning or reducing discipline of termination if doing so would be inconsistent with the public interest. Applies to collective bargaining agreements entered into after the effective date of the act. States the terms in the measure are not subject to collective bargaining. Requires the Commission to adopt and publish rules establishing the uniform standards by October 1, 2022. Requires a preliminary report to be submitted to the House Committee on Judiciary by September 1, 2022, and every year thereafter. Declares emergency, effective upon passage.

ISSUES DISCUSSED:

- Police accountability
- Difficulty in disciplining officers for misconduct
- Lack of clear standards in arbitration proceedings
- Underlying police department policies
- Lack of specific examples of problem arbitrations
- Number of cases that proceed to arbitration
- Concerns with eliminating arbitration as an option for police grievances
- SB 1604 (2020 First Special Session)
- Definition of "public interest"

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EFFECT OF AMENDMENT:

Requires that the standard arbitrators apply in police discipline cases be just cause, as defined in ORS 236.350. Sets the standard of evidence at preponderance of the evidence, requires the employer to show: (1) the officer engaged in misconduct, and (2) the discipline met the statutory just cause standard. Requires the arbitrator, when In determining the reasonableness of the disciplinary action imposed by an agency, requires the arbitrator to uphold the discipline unless it is arbitrary and capricious. Prohibits arbitrator from overturning or reducing discipline of termination if doing so would be inconsistent with the public interest. Expands the Commission on Statewide Law Enforcement Standards of Conduct and Discipline from 11 to 15 members. Modifies the membership of the Commission. Allows for designees. Applies to collective bargaining agreements entered into after the effective date of the act. States the terms in the measure are not subject to collective bargaining. Requires the Commission to adopt and publish rules establishing the uniform standards by October 1, 2022. Requires a preliminary report to be submitted to the House Committee on Judiciary by September 1, 2022, and every year thereafter.

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 a 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.

House Bill 2930 A removes the discipline matrix or discipline guide as a mandatory subject of collective bargaining for law enforcement, establishes the Commission on Statewide Law Enforcement Standards of Conduct and Discipline, and requires an arbitrator to apply a reasonable person standard.