

Requested by Senator GORSEK

**PROPOSED AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 2930**

1 On page 1 of the printed A-engrossed bill, line 3, after “ORS” delete  
2 “243.650 and”.

3 Delete lines 5 through 12 and delete pages 2 through 13 and insert:

4 **“SECTION 1. Section 2 of this 2021 Act is added to and made a part**  
5 **of ORS 243.650 to 243.806.**

6 **“SECTION 2. (1) For purposes of an arbitration proceeding under**  
7 **ORS 243.706 concerning alleged misconduct by a law enforcement offi-**  
8 **cer:**

9 **“(a) A law enforcement agency has the burden of proof by clear and**  
10 **convincing evidence to show that:**

11 **“(A) The officer engaged in the alleged misconduct; and**

12 **“(B) Any disciplinary action taken against the officer was with just**  
13 **cause, as defined in ORS 236.350.**

14 **“(b) In determining the reasonableness of a disciplinary action im-**  
15 **posed by an agency, including whether the level of discipline is ap-**  
16 **propriate, an arbitrator shall uphold the disciplinary action unless the**  
17 **arbitrator finds that the disciplinary action was not reasonable.**

18 **“(c) The requirements described in this subsection are not subject**  
19 **to collective bargaining.**

20 **“(2)(a) Notwithstanding ORS 243.706 (1), and subject to paragraph**  
21 **(b) of this subsection, in carrying out an arbitration proceeding de-**

1 scribed under ORS 243.706 (3), the Employment Relations Board shall  
2 appoint a person from a list of qualified, indifferent and unbiased  
3 persons to serve as the arbitrator of the proceeding. The board shall  
4 submit to the law enforcement agency and the exclusive representative  
5 the list of persons who may serve as arbitrators.

6 “(b) After the board has selected a person from the list to serve as  
7 the arbitrator of the proceeding, each of the parties subject to the  
8 proceeding is entitled to one opportunity to object to the board’s pro-  
9 posed arbitrator. If a party objects to the proposed arbitrator, the  
10 board shall select an alternative person to serve as the arbitrator. If  
11 the other party objects to the alternative person, the board shall make  
12 a final selection from the names remaining on the list as to who shall  
13 serve as the arbitrator of the proceeding.

14 “(3) As used in this section, ‘law enforcement agency’ and ‘law  
15 enforcement officer’ have the meanings given those terms in ORS  
16 131.930.

17 **“SECTION 3.** ORS 243.706, as amended by section 1, chapter 18, Oregon  
18 Laws 2020 (first special session), is amended to read:

19 “243.706. (1) A public employer may enter into a written agreement with  
20 the exclusive representative of an appropriate bargaining unit setting forth  
21 a grievance procedure culminating in binding arbitration or any other dis-  
22 pute resolution process agreed to by the parties. As a condition of  
23 enforceability, any arbitration award that orders the reinstatement of a  
24 public employee or otherwise relieves the public employee of responsibility  
25 for misconduct shall comply with public policy requirements as clearly de-  
26 fined in statutes or judicial decisions including but not limited to policies  
27 respecting sexual harassment or sexual misconduct, unjustified and egregious  
28 use of physical or deadly force and serious criminal misconduct, related to  
29 work. In addition, with respect to claims that a grievant should be reinstated  
30 or otherwise relieved of responsibility for misconduct based upon the public

1 employer's alleged previous differential treatment of employees for the same  
2 or similar conduct, the arbitration award must conform to the following  
3 principles:

4 "(a) Some misconduct is so egregious that no employee can reasonably  
5 rely on past treatment for similar offenses as a justification or defense to  
6 discharge or other discipline.

7 "(b) Public managers have a right to change disciplinary policies at any  
8 time, notwithstanding prior practices, if such managers give reasonable ad-  
9 vance notice to affected employees and the change does not otherwise violate  
10 a collective bargaining agreement.

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

15 "(3)(a) Notwithstanding subsection (1) of this section, when an arbitration  
16 proceeding involves alleged misconduct by a sworn law enforcement officer  
17 of any law enforcement agency, as those terms are defined in ORS 131.930,  
18 and the arbitrator makes a finding that misconduct has occurred consistent  
19 with the law enforcement agency's finding of misconduct, the arbitration  
20 award may not order any disciplinary action that differs from the discipli-  
21 nary action imposed by the agency, if the disciplinary action imposed by the  
22 agency is consistent with the provisions of a discipline guide or discipline  
23 matrix adopted by the agency as a result of collective bargaining and incor-  
24 porated into the agency's disciplinary policies.

25 "**(b) The adoption of a discipline guide or discipline matrix by a law**  
26 **enforcement agency, as described in paragraph (a) of this subsection,**  
27 **supersedes any preexisting practices or standards of the agency related**  
28 **to the discipline of law enforcement officers.**

29 "(4) In an arbitration proceeding under this section, the arbitrators, or a  
30 majority of the arbitrators, may:

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

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

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

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

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

10       “(5) The arbitrators shall promptly provide a copy of a subpoena issued  
11 under this section to each party to the arbitration proceeding.

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

14       “(7) If a person fails to comply with a subpoena issued under this section  
15 or if a witness refuses to testify on a matter on which the witness may be  
16 lawfully questioned, the party who requested the subpoena or seeks the tes-  
17 timony may apply to the arbitrators for an order authorizing the party to  
18 apply to the circuit court of any county to enforce the subpoena or compel  
19 the testimony. On the application of the attorney of record for the party or  
20 on the application of the arbitrators, or a majority of the arbitrators, the  
21 court may require the person or witness to show cause why the person or  
22 witness should not be punished for contempt of court to the same extent and  
23 purpose as if the proceedings were pending before the court.

24       “(8) Witnesses appearing pursuant to subpoena, other than parties or of-  
25 ficers or employees of the public employer, shall receive fees and mileage as  
26 prescribed by law for witnesses in ORS 44.415 (2).

27       “(9) As used in this section:

28       “(a) ‘Discipline guide’ means a grid that is designed to provide parameters  
29 for the level of discipline to be imposed for an act of misconduct that is  
30 categorized by the severity of the misconduct and that take into account the

1 presumptive level of discipline for the misconduct and any aggravating or  
2 mitigating factors.

3 “(b) ‘Discipline matrix’ means a grid used to determine the level of dis-  
4 cipline to be imposed for an act of misconduct that is categorized by the  
5 severity of the misconduct, according to the intersection where the category  
6 of misconduct and the level of disciplinary action meet.

7 **“SECTION 4. The amendments to ORS 243.706 by section 3 of this**  
8 **2021 Act apply to collective bargaining agreements entered into or re-**  
9 **newed on or after July 1, 2021.**

10 **“SECTION 5. This 2021 Act being necessary for the immediate**  
11 **preservation of the public peace, health and safety, an emergency is**  
12 **declared to exist, and this 2021 Act takes effect on its passage.”.**

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