

# Senate Bill 187

Sponsored by Senator GORSEK (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Repeals provision that prohibits transit workers from striking. Makes conforming amendments.

## A BILL FOR AN ACT

1  
2 Relating to strikes by transit workers; amending ORS 243.726, 243.742 and 243.752; and repealing  
3 ORS 243.738.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. ORS 243.738 is repealed.**

6 **SECTION 2.** ORS 243.742 is amended to read:

7 243.742. (1) It is the public policy of the State of Oregon that where the right of employees to  
8 strike is by law prohibited, it is requisite to the high morale of such employees and the efficient  
9 operation of such departments to afford an alternate, expeditious, effective and binding procedure  
10 for the resolution of labor disputes and to that end the provisions of ORS 240.060, 240.065, 240.080,  
11 240.123, 243.650 to 243.809 and 341.290, providing for compulsory arbitration, shall be liberally con-  
12 strued.

13 (2) When the procedures set forth in ORS 243.712 and 243.722, relating to mediation of a labor  
14 dispute, have not culminated in a signed agreement between the parties who are prohibited from  
15 striking, the public employer and exclusive representative of its employees shall include with the  
16 final offer filed with the mediator a petition to the Employment Relations Board in writing that in-  
17 itiates binding arbitration for bargaining units with employees referred to in ORS 243.736 [*or*  
18 *243.738*]. Arbitration shall be scheduled by mutual agreement not earlier than 30 days following the  
19 submission of the final offer packages to the mediator. Arbitration shall be scheduled in accordance  
20 with the procedures prescribed in ORS 243.746.

21 **SECTION 3.** ORS 243.752 is amended to read:

22 243.752. (1) A majority decision of the arbitration panel, under ORS 243.706, 243.726, 243.736,  
23 [*243.738,*] 243.742 and 243.746, if supported by competent, material and substantial evidence on the  
24 whole record, based upon the factors set forth in ORS 243.746 (4), shall be final and binding upon  
25 the parties. Refusal or failure to comply with any provision of a final and binding arbitration award  
26 is an unfair labor practice. Any order issued by the Employment Relations Board pursuant to this  
27 section may be enforced at the instance of either party or the board in the circuit court for the  
28 county in which the dispute arose.

29 (2) The arbitration panel may award increases retroactively to the first day after the expiration  
30 of the immediately preceding collective bargaining agreement. At any time the parties, by stipu-  
31 lation, may amend or modify an award of arbitration.

32 **SECTION 4.** ORS 243.726 is amended to read:

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1       243.726. (1) Participation in a strike shall be unlawful for any public employee who is not in-  
2 cluded in an appropriate bargaining unit for which an exclusive representative has been certified  
3 by the Employment Relations Board or recognized by the employer; or is included in an appropriate  
4 bargaining unit that provides for resolution of a labor dispute by petition to final and binding arbi-  
5 tration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650  
6 to 243.809 and 341.290.

7       (2) It shall be lawful for a public employee who is not prohibited from striking under subsection  
8 (1) of this section and who is in the appropriate bargaining unit involved in a labor dispute to par-  
9 ticipate in a strike over mandatory subjects of bargaining provided:

10       (a) The requirements of ORS 243.712 and 243.722 relating to the resolution of labor disputes  
11 have been complied with in good faith;

12       (b) Thirty days have elapsed since the board has made public the fact finder's findings of fact  
13 and recommendations or the mediator has made public the parties' final offers;

14       (c) The exclusive representative has given 10 days' notice by certified mail of its intent to strike  
15 and stating the reasons for its intent to strike to the board and the public employer;

16       (d) The collective bargaining agreement has expired, or the labor dispute arises pursuant to a  
17 reopener provision in a collective bargaining agreement or renegotiation under ORS 243.702 (1) or  
18 renegotiation under ORS 243.698; and

19       (e) The union's strike does not include unconventional strike activity not protected under the  
20 National Labor Relations Act on June 6, 1995, and does not constitute an unfair labor practice un-  
21 der ORS 243.672 (3).

22       (3)(a) Where the strike occurring or is about to occur creates a clear and present danger or  
23 threat to the health, safety or welfare of the public, the public employer concerned may petition the  
24 circuit court of the county in which the strike has taken place or is to take place for equitable relief  
25 including but not limited to appropriate injunctive relief.

26       (b) If the strike is a strike of state employees the petition shall be filed in the Circuit Court of  
27 Marion County.

28       (c) If, after hearing, the court finds that the strike creates a clear and present danger or threat  
29 to the health, safety or welfare of the public, it shall grant appropriate relief. Such relief shall in-  
30 clude an order that the labor dispute be submitted to final and binding arbitration within 10 days  
31 of the court's order pursuant to procedures in ORS 243.746.

32       (4)(a) A labor organization may not declare or authorize a strike of public employees that is or  
33 would be in violation of this section. When it is alleged in good faith by the public employer that  
34 a labor organization has declared or authorized a strike of public employees that is or would be in  
35 violation of this section, the employer may petition the board for a declaration that the strike is or  
36 would be unlawful. The board, after conducting an investigation and hearing, may make such dec-  
37 laration if it finds that such declaration or authorization of a strike is or would be unlawful.

38       (b) When a labor organization or individual disobeys an order of the appropriate circuit court  
39 issued pursuant to enforcing an order of the board involving this section and ORS 243.736 [or  
40 243.738], they shall be punished according to the provisions of ORS 33.015 to 33.155, except that the  
41 amount of the fine shall be at the discretion of the court.

42       (5) An unfair labor practice by a public employer shall not be a defense to a prohibited strike.  
43 The board upon the filing of an unfair labor charge alleging that a public employer has committed  
44 an unfair labor practice during or arising out of the collective bargaining procedures set forth in  
45 ORS 243.712 and 243.722, shall take immediate action on such charge and if required, petition the

1 court of competent jurisdiction for appropriate relief or a restraining order.

2 (6) As used in this section, “danger or threat to the health, safety or welfare of the public” does  
3 not include an economic or financial inconvenience to the public or to the public employer that is  
4 normally incident to a strike by public employees.

5

---