

Senate Bill 197

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**.

Expands requirement for mandatory bargaining over class size and caseload limits to all school districts. Clarifies that such bargaining occur as necessary to align with quality goals regarding class size and caseload limits as recommended by Quality Education Commission.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to mandatory subjects of school district bargaining; amending ORS 243.650; and prescribing
3 an effective date.

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

5 **SECTION 1.** ORS 243.650, as amended by section 5, chapter 541, Oregon Laws 2021, is amended
6 to read:

7 243.650. As used in ORS 243.650 to 243.809, unless the context requires otherwise:

8 (1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board
9 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-
10 ever, an appropriate bargaining unit may not include both academically licensed and unlicensed or
11 nonacademically licensed school employees. Academically licensed units may include but are not
12 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and
13 similar positions. This limitation does not apply to any bargaining unit certified or recognized prior
14 to June 6, 1995, or to any school district with fewer than 50 employees.

15 (2) "Board" means the Employment Relations Board.

16 (3) "Certification" means official recognition by the board that a labor organization is the ex-
17 clusive representative for all of the employees in the appropriate bargaining unit.

18 (4) "Collective bargaining" means the performance of the mutual obligation of a public employer
19 and the representative of its employees to meet at reasonable times and confer in good faith with
20 respect to employment relations for the purpose of negotiations concerning mandatory subjects of
21 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute
22 concerning the interpretation or application of a collective bargaining agreement, and to execute
23 written contracts incorporating agreements that have been reached on behalf of the public employer
24 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and
25 negotiate does not compel either party to agree to a proposal or require the making of a concession.
26 This subsection may not be construed to prohibit a public employer and a certified or recognized
27 representative of its employees from discussing or executing written agreements regarding matters
28 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-
29 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

30 (5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute

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 are required by law to submit their differences to a third party for a final and binding decision.

2 (6) "Confidential employee" means one who assists and acts in a confidential capacity to a per-
3 son who formulates, determines and effectuates management policies in the area of collective bar-
4 gaining.

5 (7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indi-
6 rect monetary benefits, hours, vacations, sick leave, labor organization access to and communication
7 with represented employees, grievance procedures and other conditions of employment.

8 (b) "Employment relations" does not include subjects determined to be permissive, nonmanda-
9 tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

10 (c) After June 6, 1995, "employment relations" does not include subjects that the Employment
11 Relations Board determines to have a greater impact on management's prerogative than on employee
12 wages, hours, or other terms and conditions of employment.

13 (d) "Employment relations" does not include subjects that have an insubstantial or de minimis
14 effect on public employee wages, hours, and other terms and conditions of employment.

15 (e) For school district bargaining:

16 (A) "Employment relations" includes class size and caseload limits [*in schools that qualify for*
17 *assistance under Title I of the federal Elementary and Secondary Education Act of 1965*] **as necessary**
18 **to ensure class size and caseload limits align with the class size and caseload limits identified**
19 **in the quality goals as recommended by the Quality Education Commission established by**
20 **ORS 327.500.**

21 (B) "Employment relations" excludes the school or educational calendar, standards of perform-
22 ance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and
23 at-work personal conduct requirements respecting smoking, gum chewing and similar matters of
24 personal conduct, the standards and procedures for student discipline, the time between student
25 classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS
26 329.704, requirements for expressing milk under ORS 653.077, and any other subject proposed that
27 is permissive under paragraphs (b), (c) and (d) of this subsection.

28 (f) For employee bargaining involving employees covered by ORS 243.736 and employees of the
29 Department of Corrections who have direct contact with adults in custody, "employment relations"
30 includes safety issues that have an impact on the on-the-job safety of the employees or staffing levels
31 that have a significant impact on the on-the-job safety of the employees.

32 (g) For all other employee bargaining except school district bargaining and except as provided
33 in paragraph (f) of this subsection, "employment relations" excludes staffing levels and safety issues
34 (except those staffing levels and safety issues that have a direct and substantial effect on the on-
35 the-job safety of public employees), scheduling of services provided to the public, determination of
36 the minimum qualifications necessary for any position, criteria for evaluation or performance ap-
37 praisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress,
38 grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar
39 matters of personal conduct at work, and any other subject proposed that is permissive under par-
40 agraphs (b), (c) and (d) of this subsection.

41 (8) "Exclusive representative" means the labor organization that, as a result of certification by
42 the board or recognition by the employer, has the right to be the collective bargaining agent of all
43 employees in an appropriate bargaining unit.

44 (9) "Fact-finding" means identification of the major issues in a particular labor dispute by one
45 or more impartial individuals who review the positions of the parties, resolve factual differences and

1 make recommendations for settlement of the dispute.

2 (10) "Fair-share agreement" means an agreement between the public employer and the recog-
3 nized or certified bargaining representative of public employees whereby employees who are not
4 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
5 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition
6 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
7 security agreement declaring they desire that the agreement be rescinded, the board shall take a
8 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-
9 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an
10 election favor the union security agreement, the board shall certify deauthorization of the agree-
11 ment. A petition for deauthorization of a union security agreement must be filed not more than 90
12 calendar days after the collective bargaining agreement is executed. Only one such election may be
13 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement
14 between a public employer and the recognized or certified bargaining representative.

15 (11) "Final offer" means the proposed contract language and cost summary submitted to the
16 mediator within seven days of the declaration of impasse.

17 (12) "Labor dispute" means any controversy concerning employment relations or concerning the
18 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to
19 arrange terms or conditions of employment relations, regardless of whether the disputants stand in
20 the proximate relation of employer and employee.

21 (13) "Labor organization" means any organization that has as one of its purposes representing
22 employees in their employment relations with public employers.

23 (14) "Last best offer package" means the offer exchanged by parties not less than 14 days prior
24 to the date scheduled for an interest arbitration hearing.

25 (15) "Legislative body" means the Legislative Assembly, the city council, the county commission
26 and any other board or commission empowered to levy taxes.

27 (16) "Managerial employee" means an employee of the State of Oregon or a public university
28 listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or
29 who represents management's interest by taking or effectively recommending discretionary actions
30 that control or implement employer policy, and who has discretion in the performance of these
31 management responsibilities beyond the routine discharge of duties. A "managerial employee" need
32 not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection,
33 "managerial employee" does not include faculty members at a community college, college or uni-
34 versity.

35 (17) "Mediation" means assistance by an impartial third party in reconciling a labor dispute
36 between the public employer and the exclusive representative regarding employment relations.

37 (18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclu-
38 sive representative in negotiations and contract administration of all persons in an appropriate
39 bargaining unit who are not members of the organization serving as exclusive representative of the
40 employees. The payment must be equivalent to regular union dues and assessments, if any, or must
41 be an amount agreed upon by the public employer and the exclusive representative of the employees.

42 (19) "Public employee" means an employee of a public employer but does not include elected
43 officials, persons appointed to serve on boards or commissions, incarcerated persons working under
44 Article I, section 41, of the Oregon Constitution, or persons who are confidential employees, super-
45 visory employees or managerial employees.

1 (20) "Public employer" means the State of Oregon, and the following political subdivisions:
2 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
3 politan service districts, public service corporations or municipal corporations and public and
4 quasi-public corporations.

5 (21) "Public employer representative" includes any individual or individuals specifically desig-
6 nated by the public employer to act in its interests in all matters dealing with employee represen-
7 tation, collective bargaining and related issues.

8 (22) "Strike" means a public employee's refusal in concerted action with others to report for
9 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his
10 or her absence in whole or in part from the full, faithful or proper performance of his or her duties
11 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,
12 compensation, rights, privileges or obligations of public employment; however, nothing shall limit
13 or impair the right of any public employee to lawfully express or communicate a complaint or
14 opinion on any matter related to the conditions of employment.

15 (23)(a) "Supervisory employee" means any individual having authority in the interest of the
16 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
17 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
18 commend such action, if in connection therewith, the exercise of the authority is not of a merely
19 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-
20 sory status in any Employment Relations Board proceeding or in negotiations for any collective
21 bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent
22 board proceeding or contract negotiation.

23 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS
24 352.002 or the Oregon Health and Science University who:

25 (A) Is employed as a president, vice president, provost, vice provost, dean, associate dean, as-
26 sistant dean, head or equivalent position; or

27 (B) Is employed in an administrative position without a reasonable expectation of teaching, re-
28 search or other scholarly accomplishments.

29 (c) "Supervisory employee" does not include:

30 (A) A nurse, charge nurse or nurse holding a similar position if that position has not tradi-
31 tionally been classified as supervisory;

32 (B) A firefighter prohibited from striking by ORS 243.736 who assigns, transfers or directs the
33 work of other employees but does not have the authority to hire, discharge or impose economic
34 discipline on those employees;

35 (C) A faculty member of a public university listed in ORS 352.002 or the Oregon Health and
36 Science University who is not a faculty member described in paragraph (b) of this subsection; or

37 (D) An employee of the Oregon State Police who:

38 (i) Serves in a rank equivalent to or below the rank of sergeant;

39 (ii) Is prohibited from striking by ORS 243.736; and

40 (iii) Assigns, transfers or directs the work of other employees but does not hire, discharge or
41 impose economic discipline on those employees.

42 (24) "Unfair labor practice" means the commission of an act designated an unfair labor practice
43 in ORS 243.672.

44 (25) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute
45 mutually agree to submit their differences to a third party for a final and binding decision.

1 **SECTION 2.** ORS 243.650, as amended by section 2, chapter 146, Oregon Laws 2019, section 3,
2 chapter 18, Oregon Laws 2020 (first special session), section 2, chapter 490, Oregon Laws 2021, and
3 section 6, chapter 541, Oregon Laws 2021, is amended to read:

4 243.650. As used in ORS 243.650 to 243.809, unless the context requires otherwise:

5 (1) “Appropriate bargaining unit” means the unit designated by the Employment Relations Board
6 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-
7 ever, an appropriate bargaining unit may not include both academically licensed and unlicensed or
8 nonacademically licensed school employees. Academically licensed units may include but are not
9 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and
10 similar positions. This limitation does not apply to any bargaining unit certified or recognized prior
11 to June 6, 1995, or to any school district with fewer than 50 employees.

12 (2) “Board” means the Employment Relations Board.

13 (3) “Certification” means official recognition by the board that a labor organization is the ex-
14 clusive representative for all of the employees in the appropriate bargaining unit.

15 (4) “Collective bargaining” means the performance of the mutual obligation of a public employer
16 and the representative of its employees to meet at reasonable times and confer in good faith with
17 respect to employment relations for the purpose of negotiations concerning mandatory subjects of
18 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute
19 concerning the interpretation or application of a collective bargaining agreement, and to execute
20 written contracts incorporating agreements that have been reached on behalf of the public employer
21 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and
22 negotiate does not compel either party to agree to a proposal or require the making of a concession.
23 This subsection may not be construed to prohibit a public employer and a certified or recognized
24 representative of its employees from discussing or executing written agreements regarding matters
25 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-
26 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

27 (5) “Compulsory arbitration” means the procedure whereby parties involved in a labor dispute
28 are required by law to submit their differences to a third party for a final and binding decision.

29 (6) “Confidential employee” means one who assists and acts in a confidential capacity to a per-
30 son who formulates, determines and effectuates management policies in the area of collective bar-
31 gaining.

32 (7)(a) “Employment relations” includes, but is not limited to, matters concerning direct or indi-
33 rect monetary benefits, hours, vacations, sick leave, labor organization access to and communication
34 with represented employees, grievance procedures and other conditions of employment.

35 (b) “Employment relations” does not include subjects determined to be permissive, nonmanda-
36 tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

37 (c) After June 6, 1995, “employment relations” does not include subjects that the Employment
38 Relations Board determines to have a greater impact on management’s prerogative than on employee
39 wages, hours, or other terms and conditions of employment.

40 (d) “Employment relations” does not include subjects that have an insubstantial or de minimis
41 effect on public employee wages, hours, and other terms and conditions of employment.

42 (e) For school district bargaining:

43 (A) “Employment relations” includes class size and caseload limits [*in schools that qualify for*
44 *assistance under Title I of the federal Elementary and Secondary Education Act of 1965*] **as necessary**
45 **to ensure class size and caseload limits align with the class size and caseload limits identified**

1 **in the quality goals as recommended by the Quality Education Commission established by**
2 **ORS 327.500.**

3 (B) "Employment relations" excludes the school or educational calendar, standards of perform-
4 ance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and
5 at-work personal conduct requirements respecting smoking, gum chewing and similar matters of
6 personal conduct, the standards and procedures for student discipline, the time between student
7 classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS
8 329.704, requirements for expressing milk under ORS 653.077, and any other subject proposed that
9 is permissive under paragraphs (b), (c) and (d) of this subsection.

10 (f) For employee bargaining involving employees covered by ORS 243.736 and employees of the
11 Department of Corrections who have direct contact with adults in custody, "employment relations"
12 includes safety issues that have an impact on the on-the-job safety of the employees or staffing levels
13 that have a significant impact on the on-the-job safety of the employees.

14 (g) For all other employee bargaining except school district bargaining and except as provided
15 in paragraph (f) of this subsection, "employment relations" excludes staffing levels and safety issues
16 (except those staffing levels and safety issues that have a direct and substantial effect on the on-
17 the-job safety of public employees), scheduling of services provided to the public, determination of
18 the minimum qualifications necessary for any position, criteria for evaluation or performance ap-
19 praisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress,
20 grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar
21 matters of personal conduct at work, and any other subject proposed that is permissive under par-
22 agraphs (b), (c) and (d) of this subsection.

23 (8) "Exclusive representative" means the labor organization that, as a result of certification by
24 the board or recognition by the employer, has the right to be the collective bargaining agent of all
25 employees in an appropriate bargaining unit.

26 (9) "Fact-finding" means identification of the major issues in a particular labor dispute by one
27 or more impartial individuals who review the positions of the parties, resolve factual differences and
28 make recommendations for settlement of the dispute.

29 (10) "Fair-share agreement" means an agreement between the public employer and the recog-
30 nized or certified bargaining representative of public employees whereby employees who are not
31 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
32 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition
33 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
34 security agreement declaring they desire that the agreement be rescinded, the board shall take a
35 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-
36 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an
37 election favor the union security agreement, the board shall certify deauthorization of the agree-
38 ment. A petition for deauthorization of a union security agreement must be filed not more than 90
39 calendar days after the collective bargaining agreement is executed. Only one such election may be
40 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement
41 between a public employer and the recognized or certified bargaining representative.

42 (11) "Final offer" means the proposed contract language and cost summary submitted to the
43 mediator within seven days of the declaration of impasse.

44 (12) "Labor dispute" means any controversy concerning employment relations or concerning the
45 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to

1 arrange terms or conditions of employment relations, regardless of whether the disputants stand in
2 the proximate relation of employer and employee.

3 (13) "Labor organization" means any organization that has as one of its purposes representing
4 employees in their employment relations with public employers.

5 (14) "Last best offer package" means the offer exchanged by parties not less than 14 days prior
6 to the date scheduled for an interest arbitration hearing.

7 (15) "Legislative body" means the Legislative Assembly, the city council, the county commission
8 and any other board or commission empowered to levy taxes.

9 (16) "Managerial employee" means an employee of the State of Oregon or a public university
10 listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or
11 who represents management's interest by taking or effectively recommending discretionary actions
12 that control or implement employer policy, and who has discretion in the performance of these
13 management responsibilities beyond the routine discharge of duties. A "managerial employee" need
14 not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection,
15 "managerial employee" does not include faculty members at a community college, college or uni-
16 versity.

17 (17) "Mediation" means assistance by an impartial third party in reconciling a labor dispute
18 between the public employer and the exclusive representative regarding employment relations.

19 (18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclu-
20 sive representative in negotiations and contract administration of all persons in an appropriate
21 bargaining unit who are not members of the organization serving as exclusive representative of the
22 employees. The payment must be equivalent to regular union dues and assessments, if any, or must
23 be an amount agreed upon by the public employer and the exclusive representative of the employees.

24 (19) "Public employee" means an employee of a public employer but does not include elected
25 officials, persons appointed to serve on boards or commissions, incarcerated persons working under
26 Article I, section 41, of the Oregon Constitution, or persons who are confidential employees, super-
27 visory employees or managerial employees.

28 (20) "Public employer" means the State of Oregon, and the following political subdivisions:
29 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
30 politan service districts, public service corporations or municipal corporations and public and
31 quasi-public corporations.

32 (21) "Public employer representative" includes any individual or individuals specifically desig-
33 nated by the public employer to act in its interests in all matters dealing with employee represen-
34 tation, collective bargaining and related issues.

35 (22) "Strike" means a public employee's refusal in concerted action with others to report for
36 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his
37 or her absence in whole or in part from the full, faithful or proper performance of his or her duties
38 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,
39 compensation, rights, privileges or obligations of public employment; however, nothing shall limit
40 or impair the right of any public employee to lawfully express or communicate a complaint or
41 opinion on any matter related to the conditions of employment.

42 (23)(a) "Supervisory employee" means any individual having authority in the interest of the
43 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
44 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
45 commend such action, if in connection therewith, the exercise of the authority is not of a merely

1 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-
 2 sory status in any Employment Relations Board proceeding or in negotiations for any collective
 3 bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent
 4 board proceeding or contract negotiation.

5 (b) “Supervisory employee” includes a faculty member of a public university listed in ORS
 6 352.002 or the Oregon Health and Science University who:

7 (A) Is employed as a president, vice president, provost, vice provost, dean, associate dean, as-
 8 sistant dean, head or equivalent position; or

9 (B) Is employed in an administrative position without a reasonable expectation of teaching, re-
 10 search or other scholarly accomplishments.

11 (c) “Supervisory employee” does not include:

12 (A) A nurse, charge nurse or nurse holding a similar position if that position has not tradi-
 13 tionally been classified as supervisory;

14 (B) A firefighter prohibited from striking by ORS 243.736 who assigns, transfers or directs the
 15 work of other employees but does not have the authority to hire, discharge or impose economic
 16 discipline on those employees; or

17 (C) A faculty member of a public university listed in ORS 352.002 or the Oregon Health and
 18 Science University who is not a faculty member described in paragraph (b) of this subsection.

19 (24) “Unfair labor practice” means the commission of an act designated an unfair labor practice
 20 in ORS 243.672.

21 (25) “Voluntary arbitration” means the procedure whereby parties involved in a labor dispute
 22 mutually agree to submit their differences to a third party for a final and binding decision.

23 **SECTION 3. This 2023 Act takes effect on the 91st day after the date on which the 2023**
 24 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**