

HOUSE AMENDMENTS TO HOUSE BILL 4115

By COMMITTEE ON BUSINESS AND LABOR

February 15

1 On page 1 of the printed bill, line 2, before the period insert “and 243.682; and declaring an
2 emergency”.

3 Delete lines 4 through 29 and delete pages 2 through 4 and insert:

4 “**SECTION 1.** ORS 243.650 is amended to read:

5 “243.650. As used in ORS 243.650 to 243.809, unless the context requires otherwise:

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

13 “(2) ‘Board’ means the Employment Relations Board.

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

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

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

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

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

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

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

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

8 “(e) For school district bargaining:

9 “(A) ‘Employment relations’ includes class size and caseload limits in schools that qualify for
10 assistance under Title I of the federal Elementary and Secondary Education Act of 1965.

11 “(B) ‘Employment relations’ excludes the school or educational calendar, standards of perform-
12 ance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and
13 at-work personal conduct requirements respecting smoking, gum chewing and similar matters of
14 personal conduct, the standards and procedures for student discipline, the time between student
15 classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS
16 329.704, requirements for expressing milk under ORS 653.077, and any other subject proposed that
17 is permissive under paragraphs (b), (c) and (d) of this subsection.

18 “(f) For employee bargaining involving employees covered by ORS 243.736 and employees of the
19 Department of Corrections who have direct contact with adults in custody, ‘employment relations’
20 includes safety issues that have an impact on the on-the-job safety of the employees or staffing levels
21 that have a significant impact on the on-the-job safety of the employees.

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

31 “(8) ‘Exclusive representative’ means the labor organization that, as a result of certification by
32 the board or recognition by the employer, has the right to be the collective bargaining agent of all
33 employees in an appropriate bargaining unit.

34 “(9) ‘Fact-finding’ means identification of the major issues in a particular labor dispute by one
35 or more impartial individuals who review the positions of the parties, resolve factual differences and
36 make recommendations for settlement of the dispute.

37 “(10) ‘Fair-share agreement’ means an agreement between the public employer and the recog-
38 nized or certified bargaining representative of public employees whereby employees who are not
39 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
40 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition
41 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
42 security agreement declaring they desire that the agreement be rescinded, the board shall take a
43 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-
44 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an
45 election favor the union security agreement, the board shall certify deauthorization of the agree-

1 ment. A petition for deauthorization of a union security agreement must be filed not more than 90
2 calendar days after the collective bargaining agreement is executed. Only one such election may be
3 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement
4 between a public employer and the recognized or certified bargaining representative.

5 “(11) ‘Final offer’ means the proposed contract language and cost summary submitted to the
6 mediator within seven days of the declaration of impasse.

7 “(12) ‘Labor dispute’ means any controversy concerning employment relations or concerning the
8 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to
9 arrange terms or conditions of employment relations, regardless of whether the disputants stand in
10 the proximate relation of employer and employee.

11 “(13) ‘Labor organization’ means any organization that has as one of its purposes representing
12 employees in their employment relations with public employers.

13 “(14) ‘Last best offer package’ means the offer exchanged by parties not less than 14 days prior
14 to the date scheduled for an interest arbitration hearing.

15 “(15) ‘Legislative body’ means the Legislative Assembly, the city council, the county commission
16 and any other board or commission empowered to levy taxes.

17 “(16) ‘Managerial employee’ means an employee of the State of Oregon or a public university
18 listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or
19 who represents management’s interest by taking or effectively recommending discretionary actions
20 that control or implement employer policy, and who has discretion in the performance of these
21 management responsibilities beyond the routine discharge of duties. A ‘managerial employee’ need
22 not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection,
23 ‘managerial employee’ does not include faculty members at a community college, college or univer-
24 sity.

25 “(17) ‘Mediation’ means assistance by an impartial third party in reconciling a labor dispute
26 between the public employer and the exclusive representative regarding employment relations.

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

32 “(19) ‘Public employee’ means an employee of a public employer but does not include elected
33 officials, persons appointed to serve on boards or commissions, incarcerated persons working under
34 Article I, section 41, of the Oregon Constitution, or persons who are confidential employees, super-
35 visory employees or managerial employees.

36 “(20) ‘Public employer’ means the State of Oregon, and the following political subdivisions:
37 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
38 politan service districts, public service corporations or municipal corporations and public and
39 quasi-public corporations.

40 “(21) ‘Public employer representative’ includes any individual or individuals specifically desig-
41 nated by the public employer to act in its interests in all matters dealing with employee represen-
42 tation, collective bargaining and related issues.

43 “(22) ‘Strike’ means a public employee’s refusal in concerted action with others to report for
44 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his
45 or her absence in whole or in part from the full, faithful or proper performance of his or her duties

1 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,
2 compensation, rights, privileges or obligations of public employment; however, nothing shall limit
3 or impair the right of any public employee to lawfully express or communicate a complaint or
4 opinion on any matter related to the conditions of employment.

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

13 “(b) ‘Supervisory employee’ includes:

14 “(A) A faculty member of a public university listed in ORS 352.002 or the Oregon Health and
15 Science University who:

16 “[A] (i) Is employed as a president, vice president, provost, vice provost, dean, associate dean,
17 assistant dean, head or equivalent position; or

18 “[B] (ii) Is employed in an administrative position without a reasonable expectation of teach-
19 ing, research or other scholarly accomplishments.

20 “(B) A guard at a correctional institution or mental hospital or a police officer who
21 serves in the rank of lieutenant or higher except for those lieutenant guards or police offi-
22 cers who were included in an appropriate bargaining unit for purposes of collective bargain-
23 ing on or before the effective date of this 2024 Act.

24 “(C) An employee of the Criminal Justice Division of the Department of Justice who
25 manages police officers of the division.

26 “(c) ‘Supervisory employee’ does not include:

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

29 “(B) A firefighter or an emergency communications worker prohibited from striking by ORS
30 243.736 who assigns, transfers or directs the work of other employees but does not have the au-
31 thority to hire, discharge or impose economic discipline on those employees;

32 “(C) A guard at a correctional institution or mental hospital or a police officer who:

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

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

35 “(iii) Assigns, transfers or directs the work of other employees but does not have the
36 authority to hire, discharge or impose economic discipline on those employees;

37 “[C] (D) A faculty member of a public university listed in ORS 352.002 or the Oregon Health
38 and Science University who is not a faculty member described in paragraph (b) of this subsection;
39 or

40 “[D] (E) An employee of the Oregon State Police who:

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

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

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

45 “(24) ‘Unfair labor practice’ means the commission of an act designated an unfair labor practice

1 in ORS 243.672.

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

4 “**SECTION 2.** ORS 243.682 is amended to read:

5 “243.682. (1) If a question of representation exists, the Employment Relations Board [*shall*]:

6 “(a)(A)(i) **Shall**, upon application of a public employer, a public employee or a labor organiza-
7 tion, designate the appropriate bargaining unit, and in making its determination shall consider such
8 factors as community of interest, wages, hours and other working conditions of the employees in-
9 volved, the history of collective bargaining, and the desires of the employees. The board may de-
10 termine a unit to be the appropriate unit in a particular case even though some other unit might
11 also be appropriate.

12 “(ii) **May not designate as appropriate a bargaining unit that includes both guards at a**
13 **correctional institution or mental hospital or police officers who serve in a rank equivalent**
14 **to the rank of sergeant and rank-and-file subordinate employees. The limitation under this**
15 **sub-subparagraph does not apply to a bargaining unit certified or recognized prior to the ef-**
16 **fective date of this 2024 Act.**

17 “(B) Unless a labor organization and a public employer agree otherwise, [*the board*] may not
18 designate as appropriate a bargaining unit that includes:

19 “[A] (i) A faculty member described in ORS 243.650 [(23)(c)(C)] **(23)(c)(D)** who supervises one
20 or more other faculty members; and

21 “[B] (ii) Any faculty member who is supervised by a faculty member described in [*subpara-*
22 *graph (A) of this paragraph*] **sub-subparagraph (i) of this subparagraph.**

23 “(b) **Shall** investigate and conduct a hearing on a petition that has been filed by:

24 “(A) A labor organization alleging that 30 percent of the employees in an appropriate bargaining
25 unit desire to be represented for collective bargaining by an exclusive representative;

26 “(B) A labor organization alleging that 30 percent of the employees in an appropriate bargaining
27 unit assert that the designated exclusive representative is no longer the representative of the ma-
28 jority of the employees in the unit;

29 “(C) A public employer alleging that one or more labor organizations has presented a claim to
30 the public employer requesting recognition as the exclusive representative in an appropriate bar-
31 gaining unit; or

32 “(D) An employee or group of employees alleging that 30 percent of the employees assert that
33 the designated exclusive representative is no longer the representative of the majority of employees
34 in the unit.

35 “(2)(a) Notwithstanding subsection (1) of this section, when an employee, group of employees or
36 labor organization acting on behalf of the employees files a petition alleging that a majority of em-
37 ployees in a unit appropriate for the purpose of collective bargaining wish to be represented by a
38 labor organization for that purpose, or when a labor organization files a petition alleging that the
39 majority in a group of unrepresented employees seek to be added to an existing bargaining unit, the
40 board shall investigate the petition. If the board finds that a majority of the employees in a unit
41 appropriate for bargaining or a majority of employees in a group of unrepresented employees that
42 is appropriate to add to an existing bargaining unit have signed authorizations designating the labor
43 organization specified in the petition as the employees’ bargaining representative and that no other
44 labor organization is currently certified or recognized as the exclusive representative of any of the
45 employees in the unit or in the group of unrepresented employees seeking to be added to an existing

1 bargaining unit, the board may not conduct an election but shall certify the labor organization as
2 the exclusive representative unless a petition for a representation election is filed as provided in
3 subsection (4) of this section.

4 “(b) The board by rule shall develop guidelines and procedures for the designation by employees
5 of a bargaining representative in the manner described in paragraph (a) of this subsection. The
6 guidelines and procedures must include:

7 “(A) Model collective bargaining authorization language that may be used for purposes of mak-
8 ing the designations described in paragraph (a) of this subsection;

9 “(B) Procedures to be used by the board to establish the authenticity of signed authorizations
10 designating bargaining representatives;

11 “(C) Procedures to be used by the board to notify affected employees of the filing of a petition
12 requesting certification under subsection (4) of this section;

13 “(D) Procedures for filing a petition to request a representation election, including a timeline
14 of not more than 14 days after notice has been delivered to the affected employees of a petition filed
15 under paragraph (a) of this subsection;

16 “(E) Procedures that may be used for preparing and signing authorizations designating bar-
17 gaining representatives using an electronic record and an electronic signature, as those terms are
18 defined in ORS 84.004; and

19 “(F) Procedures for expedited resolution of any dispute about the scope of the appropriate bar-
20 gaining unit. The resolution of the dispute may occur after an election is conducted.

21 “(c) Solicitation and rescission of a signed authorization designating bargaining representatives
22 are subject to the provisions of ORS 243.672.

23 “(3)(a) Except as otherwise provided in paragraph (b) of this subsection, a petition for repre-
24 sentation submitted as an electronic record that includes a signed authorization using an electronic
25 signature as described under subsection (2)(b)(E) of this section must:

26 “(A) Include the following information:

27 “(i) The name of signer;

28 “(ii) The signer’s electronic mail address or social media account;

29 “(iii) The signer’s telephone number;

30 “(iv) The exact language that the signer is assenting to by providing the electronic signature;

31 “(v) The date of submission of the electronic signature; and

32 “(vi) The name of the public employer that employs the signer; and

33 “(B) Be accompanied by a verification declaration by the petitioning party:

34 “(i) Specifying the technology used to obtain and verify the signatures;

35 “(ii) Providing the methods used to ensure the authenticity of the signature; and

36 “(iii) Confirming that the information transmitted to the signer was the same information to
37 which the signer assented.

38 “(b) If the technology used to provide the signed authorization does not support digital signa-
39 tures that are suited to satisfy the requirements of the verification declaration described in para-
40 graph (a) of this subsection, the petitioning party must submit evidence that, after the petitioning
41 party obtained an electronic signature, the party promptly transmitted a confirmation transmission
42 to the signer confirming that all of the information described under paragraph (a)(A)(i) to (vi) of this
43 subsection is true.

44 “(4)(a) Notwithstanding subsection (2) of this section, when a petition requesting certification
45 has been filed under subsection (2) of this section, an employee or a group of employees in the unit

1 designated by the petition, or one or more of the unrepresented employees seeking to be added to
2 an existing bargaining unit, may file a petition with the board to request that a representation
3 election be conducted.

4 “(b) The petition requesting a representation election must be supported by at least 30 percent
5 of the employees in the bargaining unit designated by the petition, or 30 percent of the unrepre-
6 sented employees seeking to be added to an existing bargaining unit.

7 “(c) The representation election shall be conducted on-site or by mail not later than 45 days
8 after the date on which the petition was filed.

9 “(5) Except as provided in ORS 243.692, if the board finds in a hearing conducted pursuant to
10 subsection (1)(b) of this section that a question of representation exists, the board shall conduct an
11 election by secret ballot, at a time and place convenient for the employees of the jurisdiction and
12 also within a reasonable period of time after the filing has taken place, and certify the results of the
13 election.

14 **“SECTION 3. This 2024 Act being necessary for the immediate preservation of the public**
15 **peace, health and safety, an emergency is declared to exist, and this 2024 Act takes effect**
16 **on its passage.”**

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