

HOUSE MINORITY REPORT AMENDMENTS TO HOUSE BILL 2944

By Nonconcurring Members of COMMITTEE ON LABOR AND WORKPLACE
STANDARDS

April 14

1 On page 1 of the printed bill, line 3, after the first semicolon delete the rest of the line and in-
2 sert “amending ORS 243.676 and”.

3 Delete lines 6 through 28 and delete pages 2 through 4 and insert:

4 “**SECTION 1.** ORS 243.676 is amended to read:

5 “243.676. (1) Whenever a written complaint is filed alleging that any person has engaged in or
6 is engaging in any unfair labor practice listed in ORS 243.672 (1) to (4) and 243.752, the Employment
7 Relations Board or its agent shall:

8 “(a) Cause to be served upon such person a copy of the complaint;

9 “(b) Investigate the complaint to determine if a hearing on the unfair labor practice charge is
10 warranted. If the investigation reveals that no issue of fact or law exists, the board may dismiss the
11 complaint; and

12 “(c) Set the matter for hearing if the board finds in its investigation made pursuant to paragraph
13 (b) of this subsection that an issue of fact or law exists. The hearing shall be before the board or
14 an agent of the board not more than 20 days after a copy of the complaint has been served on the
15 person.

16 “(2) Where, as a result of the hearing required pursuant to subsection (1)(c) of this section, the
17 board finds that any person named in the complaint has engaged in or is engaging in any unfair
18 labor practice charged in the complaint, the board shall:

19 “(a) State its findings of fact;

20 “(b) Issue and cause to be served on such person an order that the person cease and desist from
21 the unfair labor practice;

22 “(c) Take such affirmative action, including but not limited to the reinstatement of employees
23 with or without back pay, as necessary to effectuate the purposes of ORS 240.060, 240.065, 240.080,
24 240.123, 243.650 to 243.809 and 341.290;

25 “(d) Designate the amount and award representation costs, if any, to the prevailing party; and

26 “(e) Designate the amount and award attorney fees, if any, to the prevailing party on appeal,
27 including proceedings for Supreme Court review, of a board order.

28 “(3) Where the board finds that the person named in the complaint has not engaged in or is not
29 engaging in an unfair labor practice, the board shall:

30 “(a) Issue an order dismissing the complaint; and

31 “(b) Designate the amount and award representation costs, if any, to the prevailing party.

32 “(4)(a) The board may award a civil penalty to any person as a result of an unfair labor practice
33 complaint hearing, in the aggregate amount of up to \$1,000 per case, without regard to attorney fees,
34 if:

1 “(A) The complaint has been affirmed pursuant to subsection (2) of this section and the board
2 finds that the person who has committed, or who is engaging, in an unfair labor practice has done
3 so repetitively, knowing that the action taken was an unfair labor practice and took the action
4 disregarding this knowledge, or that the action constituting the unfair labor practice was egregious;
5 or

6 “(B) The complaint has been dismissed pursuant to subsection (3) of this section, and that the
7 complaint was frivolously filed, or filed with the intent to harass the other person, or both.

8 “(b) Notwithstanding paragraph (a) of this subsection, if the board finds that a public employer
9 named in the complaint violated ORS 243.670 (2), the board shall impose a civil penalty equal to
10 triple the amount of funds the public employer expended to assist, promote or deter union organiz-
11 ing.

12 “(c)(A) **Notwithstanding paragraph (a) of this subsection, if the board finds that the**
13 **public employer named in the complaint has violated ORS 243.804 (4) or 243.806 (7) and that**
14 **the employer has previously violated either provision, the board shall impose a civil penalty**
15 **of not less than \$1,000 nor more than \$5,000. For any subsequent violation, the board shall**
16 **impose a civil penalty of not less than \$5,000 nor more than \$10,000.**

17 “(B) **In determining the amount of the civil penalty to impose under this paragraph, the**
18 **board shall consider extenuating circumstances that the employer has proven contributed**
19 **to or caused the violation. An extenuating circumstance shall be an affirmative defense to**
20 **a violation described in subparagraph (A) of this paragraph and shall indemnify a public**
21 **employer from any civil penalties described in subparagraph (A) of this paragraph.**

22 “(5) As used in subsections (1) to (4) of this section, ‘person’ includes but is not limited to indi-
23 viduals, labor organizations, associations and public employers.

24 “**SECTION 2.** ORS 243.806 is amended to read:

25 “243.806. (1) A public employee may enter into an agreement with a labor organization that is
26 the exclusive representative to provide authorization for a public employer to make a deduction
27 from the salary or wages of the public employee, in the manner described in subsection (4) of this
28 section, to pay dues, fees and any other assessments or authorized deductions to the labor organ-
29 ization or its affiliated organizations or entities.

30 “(2) A public employer shall deduct the dues, fees and any other deduction authorized by a
31 public employee under this section and remit payment to the designated organization or entity.

32 “(3)(a) In addition to making the deductions and payments to a labor organization or entity de-
33 scribed in subsection (1) of this section, a public employer shall make deductions for and payments
34 to a noncertified, yet bona fide, labor organization, if so requested and authorized by a public em-
35 ployee, in the manner described in subsection (4) of this section.

36 “(b) The deductions and payments made in accordance with this subsection shall not be deemed
37 an unfair labor practice under ORS 243.672.

38 “(4)(a) A public employee may provide authorization for the deductions described in this section
39 by telephonic communication or in writing, including by an electronic record or electronic signature,
40 as those terms are defined in ORS 84.004.

41 “(b) A public employee’s authorization is independent of the employee’s membership status in the
42 labor organization to which payment is remitted and irrespective of whether a collective bargaining
43 agreement authorizes the deduction.

44 “(5) Notwithstanding subsections (1) to (4) of this section, a collective bargaining agreement
45 between a labor organization and a public employer may authorize a public employer to make a

1 deduction from the salary or wages of a public employee who is a member of the labor organization
2 to pay dues, fees or other assessments to the labor organization or its affiliated organizations or
3 entities.

4 “(6) A public employee’s authorization for a public employer to make a deduction under sub-
5 sections (1) to (4) of this section shall remain in effect until the public employee revokes the au-
6 thorization in the manner provided by the terms of the agreement. If the terms of the agreement do
7 not specify the manner in which a public employee may revoke the authorized deduction, a public
8 employee may revoke authorization for the deduction by delivering an original signed, written
9 statement of revocation to the headquarters of the labor organization.

10 “(7) A labor organization shall provide to each public employer a list identifying the public
11 employees who have provided authorization for a public employer to make deductions from the
12 public employee’s salary or wages to pay dues, fees and any other assessments or authorized de-
13 ductions to the labor organization. A public employer shall rely on the list to make the authorized
14 deductions and to remit payment to the labor organization[.] **within a time period that aligns with**
15 **a payroll processing schedule established by the employer not to exceed 30 calendar days**
16 **following the date of the deduction.**

17 “(8)(a) Notwithstanding subsection (10) of this section, a public employer that makes deductions
18 and payments in reliance on the list described in subsection (7) of this section is not liable to a
19 public employee for actual damages resulting from an unauthorized deduction.

20 “(b) A labor organization that receives payment from a public employer shall defend and
21 indemnify the public employer for the amount of any unauthorized deduction resulting from the
22 public employer’s reliance on the list.

23 “(9) If a labor organization provides a public employer with the list described in subsection (7)
24 of this section and the employer fails to make an authorized deduction and remit payment to the
25 labor organization, the public employer is liable to the labor organization, without recourse against
26 the employee who authorized the deduction, for the full amount that the employer failed to deduct
27 and remit to the labor organization.

28 “(10)(a) If a dispute arises between the public employee and the labor organization regarding the
29 existence, validity or revocation of an authorization for the deductions and payment described under
30 subsections (1) and (2) of this section, the dispute shall be resolved through an unfair labor practice
31 proceeding under ORS 243.672.

32 “(b) A public employer that makes unauthorized deductions or a labor organization that receives
33 payment in violation of the requirements of this section is liable to the public employee for actual
34 damages in an amount not to exceed the amount of the unauthorized deductions.”.

35 /s/ Shelly Boshart Davis
36 Representative

37 /s/ Lucetta Elmer
38 Representative
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