

House Bill 3979

Sponsored by Representatives SCHARF, ELMER, BOSHART DAVIS; Representatives BREESE-IVERSON, DIEHL, EDWARDS, HARBICK, HELFRICH, LEVY B, MANNIX, MCINTIRE, OSBORNE, OWENS, RESCHKE, SKARLATOS, YUNKER

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act would make changes to PECBA. The Act would prohibit public employees from engaging in strikes to resolve labor disputes. (Flesch Readability Score: 63.2).

Prohibits strikes by public employees. Requires that labor issues in dispute be submitted to final and binding arbitration.

A BILL FOR AN ACT

Relating to labor disputes involving public employees; amending ORS 181A.355, 181A.490, 181A.708, 181A.710, 181A.775, 238.005, 243.650, 243.672, 243.712, 243.726, 243.742, 243.746, 243.752, 332.531 and 352.118; and repealing ORS 243.732, 243.736 and 243.738 and section 5, chapter 43, Oregon Laws 2021.

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

SECTION 1. ORS 243.650, as amended by section 1, chapter 84, Oregon Laws 2024, is amended to read:

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

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

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

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

(4) "Collective bargaining" means the performance of the mutual obligation of a public employer and the representative of its employees to meet at reasonable times and confer in good faith with respect to employment relations for the purpose of negotiations concerning mandatory subjects of bargaining, to meet and confer in good faith in accordance with law with respect to any dispute concerning the interpretation or application of a collective bargaining agreement, and to execute written contracts incorporating agreements that have been reached on behalf of the public employer and the employees in the bargaining unit covered by such negotiations. The obligation to meet and negotiate does not compel either party to agree to a proposal or require the making of a concession. This subsection may not be construed to prohibit a public employer and a certified or recognized

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 representative of its employees from discussing or executing written agreements regarding matters
 2 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-
 3 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

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

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

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

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

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

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

19 (e) For school district bargaining:

20 (A) "Employment relations" includes class size and caseload limits in schools that qualify for
 21 assistance under Title I of the federal Elementary and Secondary Education Act of 1965.

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

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

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

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

45 (9) "Fact-finding" means identification of the major issues in a particular labor dispute by one

1 or more impartial individuals who review the positions of the parties, resolve factual differences and
2 make recommendations for settlement of the dispute.

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

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

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

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

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

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

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

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

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

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

visory employees or managerial employees.

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

(21) "Public employer representative" includes any individual or individuals specifically designated by the public employer to act in its interests in all matters dealing with employee representation, collective bargaining and related issues.

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

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

(b) "Supervisory employee" includes:

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

(i) Is employed as a president, vice president, provost, vice provost, dean, associate dean, assistant dean, head or equivalent position; or

(ii) Is employed in an administrative position without a reasonable expectation of teaching, research or other scholarly accomplishments.

(B) A guard at a correctional institution or mental hospital or a police officer who serves in the rank of lieutenant or higher except for those lieutenant guards or police officers who were included in an appropriate bargaining unit for purposes of collective bargaining on or before April 4, 2024.

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

(c) "Supervisory employee" does not include:

(A) A nurse, charge nurse or nurse holding a similar position if that position has not traditionally been classified as supervisory;

(B) A firefighter or an emergency communications worker [*prohibited from striking by ORS 243.736*] who assigns, transfers or directs the work of other employees but does not have the authority to hire, discharge or impose economic discipline on those employees;

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

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

[(ii) *Is prohibited from striking by ORS 243.736; and*]

[(iii)] (ii) Assigns, transfers or directs the work of other employees but does not have the au-

thority to hire, discharge or impose economic discipline on those employees;

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

(E) An employee of the Oregon State Police who:

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

[(ii) *Is prohibited from striking by ORS 243.736; and*]

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

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

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

SECTION 2. ORS 243.672 is amended to read:

243.672. (1) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.

(b) Dominate, interfere with or assist in the formation, existence or administration of any employee organization.

(c) Discriminate in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization. Nothing in this section is intended to prohibit the entering into of a fair-share agreement between a public employer and the exclusive bargaining representative of its employees. If a "fair-share" agreement has been agreed to by the public employer and exclusive representative, nothing prohibits the deduction of the payment-in-lieu-of-dues from the salaries or wages of the employees.

(d) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650 to 243.809.

(e) Refuse to bargain collectively in good faith with the exclusive representative.

(f) Refuse or fail to comply with any provision of ORS 243.650 to 243.809.

(g) Violate the provisions of any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them.

(h) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

(i) Violate ORS 243.670 (2).

(j) Attempt to influence an employee to resign from or decline to obtain membership in a labor organization.

(k) Encourage an employee to revoke an authorization for the deductions described under ORS 243.806.

(2) Subject to the limitations set forth in this subsection, it is an unfair labor practice for a public employee or for a labor organization or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under ORS 243.650 to 243.809.

(b) Refuse to bargain collectively in good faith with the public employer if the labor organization is an exclusive representative.

(c) Refuse or fail to comply with any provision of ORS 243.650 to 243.809.

(d) Violate the provisions of any written contract with respect to employment relations, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them.

(e) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

(3) It is an unfair labor practice for any labor organization to engage in *[unconventional]* strike activity *[not protected for private sector employees under the National Labor Relations Act on June 6, 1995. This provision applies]*, **including but not limited** to sitdown, slowdown, rolling, intermittent or on-and-off again strikes.

(4) It is an unfair labor practice for a labor organization or its agents to picket or cause, induce, or encourage to be picketed, or threaten to engage in such activity, at the residence or business premises of any individual who is a member of the governing body of a public employer, with respect to a dispute over a collective bargaining agreement or negotiations over employment relations, if an objective or effect of such picketing is to induce another person to cease doing business with the governing body member's business or to cease handling, transporting or dealing in goods or services produced at the governing body's business. For purposes of this subsection, a member of the Legislative Assembly is a member of the governing body of a public employer when the collective bargaining negotiation or dispute is between the State of Oregon and a labor organization. The Governor and other statewide elected officials are not considered members of a governing body for purposes of this subsection. Nothing in this subsection may be interpreted or applied in a manner that violates the right of free speech and assembly as protected by the Constitution of the United States or the Constitution of the State of Oregon.

(5) It is not an unfair labor practice or a violation of subsection (2)(a) of this section for the exclusive representative of an appropriate bargaining unit to charge the following employees in the unit reasonable fees and costs for representation that are unrelated to the negotiation of a collective bargaining agreement, provided that the employees are not members of the labor organization that is the exclusive representative and have not voluntarily entered into a fair-share agreement:

(a) A police officer of a city or municipal police department;

(b) A sheriff or deputy sheriff;

(c) A police officer commissioned by a university under ORS 352.121 or 353.125;

(d) An employee of the Department of Corrections or of Oregon Corrections Enterprises; or

(e) A parole or probation officer who supervises adult offenders.

(6) An injured party may file a written complaint with the Employment Relations Board not later than 180 days following the occurrence of an unfair labor practice. For each unfair labor practice complaint filed, a fee of \$300 is imposed. For each answer to an unfair labor practice complaint filed with the board, a fee of \$300 is imposed. The board may allow any other person to intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee of \$300 to the board. The board may, in its discretion, order fee reimbursement to the prevailing party in any case in which the complaint or answer is found to have been frivolous or filed in bad faith. The board shall deposit fees received under this section to the credit of the Employment Relations Board Administrative Account.

SECTION 3. ORS 243.712 is amended to read:

243.712. (1) If after a 150-calendar-day period of good faith negotiations over the terms of an agreement or 150 days after certification or recognition of an exclusive representative no agreement has been signed, either or both of the parties may notify the Employment Relations Board of the status of negotiations and the need for assignment of a mediator. Any period of time in which the public employer or labor organization has been found by the Employment Relations Board to have failed to bargain in good faith shall not be counted as part of the 150-day period. This provision cannot be invoked by the party found to have failed to bargain in good faith. The parties may agree to request a mediator before the end of the 150-day period. Upon receipt of such notification or request, the board shall appoint a mediator and shall notify the parties of the appointment. The 150-day period shall begin when the parties meet for the first bargaining session and each party has received the other party's initial proposal or on an alternative date to which the parties agree in writing.

(2) The board, upon receipt of a notification or request under subsection (1) of this section, shall render assistance to resolve the labor dispute according to the following schedule:

(a) Mediation shall be provided by the State Conciliation Service as provided by ORS 662.405 to 662.455. Any time after 15 days of mediation, either party may declare an impasse. The mediator may declare an impasse at any time during the mediation process. Notification of an impasse shall be filed in writing with the board, and copies of the notification shall be submitted to the parties on the same day the notification is filed with the board.

(b) Within seven days of the declaration of impasse, each party shall submit to the mediator in writing the final offer of the party, including a cost summary of the offer. Upon receipt of the final offers, the mediator shall make public the final offers, including any proposed contract language and each party's cost summary dealing with those issues, on which the parties have failed to reach agreement. Each party's proposed contract language shall be titled "Final Offer."

(c) Within 30 days after the mediator makes public the parties' final offers, the parties may jointly petition the Employment Relations Board to appoint a fact finder. If the parties jointly petition for fact-finding, a fact finder shall be appointed and the hearing conducted as provided in ORS 243.722.

(d) If an agreement has not been reached 30 days after the mediator makes public the final offers, or if the parties participated in fact-finding, 30 days after the receipt of the fact finder's report, the public employer *[may implement all or part of its final offer, and the public employees have the right to strike]* **shall submit the issues in dispute to final and binding arbitration, which shall be scheduled and conducted in accordance with ORS 243.746.** After a collective bargaining agreement has expired, and prior to agreement on a successor contract, the status quo with respect to employment relations shall be preserved until completion of impasse procedures except that no public employer shall be required to increase contributions for insurance premiums unless the expiring collective bargaining agreement provides otherwise. Merit step and longevity step pay increases shall be part of the status quo unless the expiring collective bargaining agreement expressly provides otherwise.

(3) Nothing in subsection (1) or (2) of this section shall be construed to prohibit the parties at any time from voluntarily agreeing to submit any or all of the issues in dispute to final and binding arbitration. The arbitration shall be scheduled and conducted in accordance with ORS 243.746. The arbitration shall supersede the dispute resolution procedures set forth in ORS *[243.726 and]* 243.746.

SECTION 4. ORS 243.726 is amended to read:

243.726. (1) Participation in a strike shall be unlawful for any public employee *[who is not in-*

cluded in an appropriate bargaining unit for which an exclusive representative has been certified by the Employment Relations Board or recognized by the employer; or is included in an appropriate bargaining unit that provides for resolution of a labor dispute by petition to final and binding arbitration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.809 and 341.290].

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

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

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

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

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

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

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

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

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

[(4)(a)] (2) A labor organization may not declare or authorize a strike of public employees [that is or would be] in violation of this section. [When it is alleged in good faith by the public employer that a labor organization has declared or authorized a strike of public employees that is or would be in violation of this section, the employer may petition the board for a declaration that the strike is or would be unlawful. The board, after conducting an investigation and hearing, may make such declaration if it finds that such declaration or authorization of a strike is or would be unlawful.]

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

[(5)] (3) An unfair labor practice by a public employer shall not be a defense to a prohibited strike. The **Employment Relations** Board upon the filing of an unfair labor charge alleging that a public employer has committed an unfair labor practice during or arising out of the collective bargaining procedures set forth in ORS 243.712 and 243.722, shall take immediate action on such charge and if required, petition the court of competent jurisdiction for appropriate relief or a restraining

1 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 **SECTION 5.** ORS 243.742 is amended to read:

6 243.742. (1) It is the public policy of the State of Oregon that [where the right of employees to
7 strike] **because striking by public employees** is by law prohibited, it is requisite to the high morale
8 of such employees and the efficient operation of such departments to afford an alternate, expe-
9 ditious, effective and binding procedure for the resolution of labor disputes and to that end the
10 provisions of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.809 and 341.290, providing for
11 compulsory arbitration, shall be liberally construed.

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

20 **SECTION 6.** ORS 243.746 is amended to read:

21 243.746. (1) In carrying out the arbitration procedures authorized in ORS 243.712[, 243.726
22 (3)(c)] and 243.742, the public employer and the exclusive representative may select their own
23 arbitrator.

24 (2) Where the parties have not selected their own arbitrator within five days after notification
25 by the Employment Relations Board that arbitration is to be initiated, the board shall submit to the
26 parties a list of seven qualified, disinterested, unbiased persons. A list of Oregon interest arbi-
27 trations and fact-findings for which each person has issued an award shall be included. Each party
28 shall alternately strike three names from the list. The order of striking shall be determined by lot.
29 The remaining individual shall be designated the "arbitrator":

30 (a) When the parties have not designated the arbitrator and notified the board of their choice
31 within five days after receipt of the list, the board shall appoint the arbitrator from the list. How-
32 ever, if one of the parties strikes the names as prescribed in this subsection and the other party fails
33 to do so, the board shall appoint the arbitrator only from the names remaining on the list.

34 (b) The concerns regarding the bias and qualifications of the person designated by lot or by
35 appointment may be challenged by a petition filed directly with the board. A hearing shall be held
36 by the board within 10 days of filing of the petition and the board shall issue a final and binding
37 decision regarding the person's neutrality within 10 days of the hearing.

38 (3) The arbitrator shall establish dates and places of hearings. Upon the request of either party
39 or the arbitrator, the board shall issue subpoenas. Not less than 14 calendar days prior to the date
40 of the hearing, each party shall submit to the other party a written last best offer package on all
41 unresolved mandatory subjects, and neither party may change the last best offer package unless
42 pursuant to stipulation of the parties or as otherwise provided in this subsection. The date set for
43 the hearing may thereafter be changed only for compelling reasons or by mutual consent of the
44 parties. If either party provides notice of a change in its position within 24 hours of the 14-day
45 deadline, the other party will be allowed an additional 24 hours to modify its position. The arbitrator

1 may administer oaths and shall afford all parties full opportunity to examine and cross-examine all
2 witnesses and to present any evidence pertinent to the dispute.

3 (4) Where there is no agreement between the parties, or where there is an agreement but the
4 parties have begun negotiations or discussions looking to a new agreement or amendment of the
5 existing agreement, unresolved mandatory subjects submitted to the arbitrator in the parties' last
6 best offer packages shall be decided by the arbitrator. Arbitrators shall base their findings and
7 opinions on these criteria giving first priority to paragraph (a) of this subsection and secondary
8 priority to paragraphs (b) to (h) of this subsection as follows:

9 (a) The interest and welfare of the public.

10 (b) The reasonable financial ability of the unit of government to meet the costs of the proposed
11 contract giving due consideration and weight to the other services, provided by, and other priorities
12 of, the unit of government as determined by the governing body. A reasonable operating reserve
13 against future contingencies, which does not include funds in contemplation of settlement of the la-
14 bor dispute, shall not be considered as available toward a settlement.

15 (c) The ability of the unit of government to attract and retain qualified personnel at the wage
16 and benefit levels provided.

17 (d) The overall compensation presently received by the employees, including direct wage com-
18 pensation, vacations, holidays and other paid excused time, pensions, insurance, benefits, and all
19 other direct or indirect monetary benefits received.

20 (e) Comparison of the overall compensation of other employees performing similar services with
21 the same or other employees in comparable communities. As used in this paragraph, "comparable"
22 is limited to communities of the same or nearest population range within Oregon. Notwithstanding
23 the provisions of this paragraph, the following additional definitions of "comparable" apply in the
24 situations described as follows:

25 (A) For any city with a population of more than 325,000, "comparable" includes comparison to
26 out-of-state cities of the same or similar size;

27 (B) For counties with a population of more than 400,000, "comparable" includes comparison to
28 out-of-state counties of the same or similar size;

29 (C) Except as otherwise provided in subparagraphs (D), (E) and (F) of this paragraph, for the
30 State of Oregon, "comparable" includes comparison to other states;

31 (D) For the Department of State Police troopers, "comparable" includes the base pay for city
32 police officers employed by the five most populous cities in this state;

33 (E) For Department of State Police telecommunicators, as defined in ORS 181A.355,
34 "comparable" includes the base pay for telecommunicators employed by the five public safety an-
35 swering points in this state, as defined in ORS 403.105, with the most employees; and

36 (F) For assistant attorneys general, "comparable" includes comparison to the base pay for at-
37 torneys who are employed by a public corporation, a nonprofit organization, a public university
38 listed in ORS 352.002 or a city or county in this state and who perform substantially similar work.

39 (f) The CPI-All Cities Index, commonly known as the cost of living.

40 (g) The stipulations of the parties.

41 (h) Such other factors, consistent with paragraphs (a) to (g) of this subsection as are tradi-
42 tionally taken into consideration in the determination of wages, hours, and other terms and condi-
43 tions of employment. However, the arbitrator shall not use such other factors, if in the judgment
44 of the arbitrator, the factors in paragraphs (a) to (g) of this subsection provide sufficient evidence
45 for an award.

(5) Not more than 30 days after the conclusion of the hearings or such further additional periods to which the parties may agree, the arbitrator shall select only one of the last best offer packages submitted by the parties and shall promulgate written findings along with an opinion and order. The opinion and order shall be served on the parties and the board. Service may be personal or by registered or certified mail. The findings, opinions and order shall be based on the criteria prescribed in subsection (4) of this section.

(6) The cost of arbitration shall be borne equally by the parties involved in the dispute.

SECTION 7. ORS 243.752 is amended to read:

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

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

SECTION 8. ORS 181A.355 is amended to read:

181A.355. As used in ORS 181A.355 to 181A.689, unless the context requires otherwise:

(1) "Abuse" has the meaning given that term in ORS 107.705.

(2) "Board" means the Board on Public Safety Standards and Training appointed pursuant to ORS 181A.360.

(3) "Certified reserve officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181A.410.

(4) "Commissioned" means being authorized to perform various acts or duties of a police officer, certified reserve officer or reserve officer and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.

(5) "Corrections officer" means an officer or member employed full-time by a law enforcement unit who:

(a) Is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(b) Has been certified as a corrections officer described in paragraph (a) of this subsection and has supervisory or management authority for corrections officers described in paragraph (a) of this subsection.

(6) "Department" means the Department of Public Safety Standards and Training.

(7) "Director" means the Director of the Department of Public Safety Standards and Training.

(8) "Domestic violence" means abuse between family or household members.

(9) "Emergency communications worker" means an individual whose official focal duties are receiving information through the emergency communications system under ORS 403.105 to 403.250, relaying the information to public or private safety agencies or dispatching emergency equipment or personnel in response to the information.

[(9)] **(10) "Emergency medical dispatcher" means a person who has responsibility to process re-**

1 requests for medical assistance from the public or to dispatch medical care providers.

2 [(10)] (11) "Family or household members" has the meaning given that term in ORS 107.705.

3 [(11)] (12) "Fire service professional" means a paid or volunteer firefighter, an officer or a
4 member of a public or private fire protection agency that is engaged primarily in fire investigation,
5 fire prevention, fire safety, fire control or fire suppression or providing emergency medical services,
6 light and heavy rescue services, search and rescue services or hazardous materials incident re-
7 sponse. "Fire service professional" does not mean forest fire protection agency personnel.

8 [(12)] (13) "Law enforcement unit" means:

9 (a) A police force or organization of the state, a city, university that has established a police
10 department under ORS 352.121 or 353.125, port, school district, mass transit district, county, county
11 service district authorized to provide law enforcement services under ORS 451.010, tribal govern-
12 ment as defined in ORS 181A.940 that employs authorized tribal police officers as defined in ORS
13 181A.940, the Criminal Justice Division of the Department of Justice, the Department of Corrections,
14 the Oregon State Lottery Commission, the Marshal's Office of the Judicial Department or common
15 carrier railroad the primary duty of which, as prescribed by law, ordinance or directive, is one or
16 more of the following:

17 (A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating
18 to airport security;

19 (B) The custody, control or supervision of individuals convicted of or arrested for a criminal
20 offense and confined to a place of incarceration or detention other than a place used exclusively for
21 incarceration or detention of juveniles; or

22 (C) The control, supervision and reformation of adult offenders placed on parole or sentenced
23 to probation and investigation of adult offenders on parole or probation or being considered for
24 parole or probation;

25 (b) A police force or organization of a private entity with a population of more than 1,000 resi-
26 dents in an unincorporated area the employees of which are commissioned by a county sheriff;

27 (c) A district attorney's office;

28 (d) The Oregon Liquor and Cannabis Commission with regard to regulatory specialists; or

29 (e) A humane investigation agency as defined in ORS 181A.340.

30 [(13)] (14) "Parole and probation officer" means:

31 (a) An officer who is employed full-time by the Department of Corrections, a county or a court
32 and who is charged with and performs the duty of:

33 (A) Community protection by controlling, investigating, supervising and providing or making
34 referrals to reformatory services for adult parolees or probationers or offenders on post-prison
35 supervision; or

36 (B) Investigating adult offenders on parole or probation or being considered for parole or pro-
37 bation;

38 (b) An officer who:

39 (A) Is certified and has been employed as a full-time parole and probation officer for more than
40 one year;

41 (B) Is employed part-time by the Department of Corrections, a county or a court; and

42 (C) Is charged with and performs the duty of:

43 (i) Community protection by controlling, investigating, supervising and providing or making re-
44 ferrals to reformatory services for adult parolees or probationers or offenders on post-prison super-
45 vision; or

(ii) Investigating adult offenders on parole or probation or being considered for parole or probation; or

(c) An officer who is certified as a parole and probation officer and is employed full-time by the State Board of Parole and Post-Prison Supervision.

[(14)] (15) "Police officer" means:

(a) An officer, member or employee of a law enforcement unit employed full-time as a peace officer who is:

(A) Commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in ORS 181A.940, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, a university that has established a police department under ORS 352.121 or 353.125, the Governor or the Department of State Police; and

(B) Responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(b) An investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or another state;

(c) A humane special agent commissioned under ORS 181A.340;

(d) A judicial marshal appointed under ORS 1.177 who is trained pursuant to ORS 181A.540; or

(e) An authorized tribal police officer as defined in ORS 181A.940.

[(15)] (16) "Public or private safety agency" means a unit of state or local government, a special purpose district or a private firm that provides, or has authority to provide, fire fighting, police, ambulance or emergency medical services.

[(16)] (17) "Public safety personnel" and "public safety officer" include corrections officers, youth correction officers, emergency medical dispatchers, parole and probation officers, police officers, certified reserve officers, reserve officers, telecommunicators, regulatory specialists and fire service professionals.

[(17)] (18) "Regulatory specialist" has the meaning given that term in ORS 471.001.

[(18)] (19) "Reserve officer" means an officer or member of a law enforcement unit who is:

(a) A volunteer or employed less than full-time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in ORS 181A.940, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, a university that has established a police department under ORS 352.121 or 353.125, the Governor or the Department of State Police;

(b) Armed with a firearm; and

(c) Responsible for enforcing the criminal laws and traffic laws of this state or laws or ordinances relating to airport security.

[(19)] (20) "Telecommunicator" means a person employed as an emergency communications worker [as defined in ORS 243.736] or a public safety dispatcher whose primary duties are receiving, processing and transmitting public safety information received through the emergency communications system as defined in ORS 403.105.

[(20)] (21) "Youth correction officer" means an employee of the Oregon Youth Authority who is charged with and primarily performs the duty of custody, control or supervision of adjudicated youths confined in a youth correction facility.

SECTION 9. ORS 332.531 is amended to read:

332.531. (1) The district school board of any school district may establish a law enforcement agency and employ such personnel as may be necessary to ensure the safety of school district personnel and students upon and in the vicinity of school district premises and the security of the real and personal property owned, controlled or used by or on behalf of the school district.

(2) Persons employed and compensated as members of a law enforcement agency of a school district, when appointed and duly sworn, are peace officers as defined in ORS 161.015 (4), but only for the purpose of carrying out the duties of their employment. *[They are not police officers within the meaning of ORS 243.736.]*

(3) The district school board may:

(a) Provide for uniforms, badges and other identification of members of the law enforcement agency;

(b) Withdraw or withhold from any person employed as a member of the law enforcement agency any part or all of the powers otherwise conferred by law upon peace officers; and

(c) Define the duties of persons employed as members of the law enforcement agency and assign additional duties to those persons as the district school board may deem appropriate.

(4) Between meetings of the district school board, the district superintendent or the deputy of the superintendent shall have power to suspend any person employed as a member of the law enforcement agency pending review of the action as soon as practicable by the district school board.

SECTION 10. ORS 352.118 is amended to read:

352.118. (1) A governing board may, in its sole discretion, do all of the following:

(a) Police, control and regulate traffic and parking of vehicles on university property.

(b) Establish a police department and commission one or more employees as police officers in the manner and with all of the privileges and immunities set forth in ORS 352.121. When a governing board establishes a police department and commissions one or more employees as police officers, the president of the university, in cooperation with the chief of the police department, shall establish a process by which the university will receive and respond to complaints involving the policies of the police department and the conduct of the police officers.

(c) Commission special campus security officers who, when acting in the scope of their employment, shall have probable cause arrest authority and the accompanying immunities as set forth in ORS 133.310 and 133.315. Special campus security officers may not be authorized to carry firearms as police officers and, except as provided in subsection (2) of this section, may not be considered police officers for purposes of ORS 181A.355, 238.005[,] **or** 243.005 *[or 243.736]*.

(2) A public university listed in ORS 352.002, acting by and through its special campus security officers, is a criminal justice agency for purposes of rules adopted pursuant to ORS 181A.280 (3).

SECTION 11. ORS 238.005, as amended by section 1, chapter 101, Oregon Laws 2024, is amended to read:

238.005. For purposes of this chapter:

(1) "Active member" means a member who is presently employed by a participating public employer in a qualifying position and who has completed the six-month period of service required by ORS 238.015.

(2) "Annuity" means payments for life derived from contributions made by a member as provided in this chapter.

(3) "Board" means the Public Employees Retirement Board.

(4) "Calendar year" means 12 calendar months commencing on January 1 and ending on December 31 following.

1 (5) "Continuous service" means service not interrupted for more than five years, except that
 2 such continuous service shall be computed without regard to interruptions in the case of:

3 (a) An employee who had returned to the service of the employer as of January 1, 1945, and
 4 who remained in that employment until having established membership in the Public Employees
 5 Retirement System.

6 (b) An employee who was in the armed services on January 1, 1945, and returned to the service
 7 of the employer within one year of the date of being otherwise than dishonorably discharged and
 8 remained in that employment until having established membership in the Public Employees Retirement
 9 System.

10 (6) "Creditable service" means any period of time during which an active member is being paid
 11 a salary by a participating public employer and for which benefits under this chapter are funded by
 12 employer contributions and earnings on the fund. For purposes of computing years of "creditable
 13 service," full months and major fractions of a month shall be considered to be one-twelfth of a year
 14 and shall be added to all full years. "Creditable service" includes all retirement credit received by
 15 a member.

16 (7) "Earliest service retirement age" means the age attained by a member when the member
 17 could first make application for retirement under the provisions of ORS 238.280.

18 (8) "Employee" means a person who performs services for a participating public employer, in-
 19 cluding persons considered employees of a participating public employer under 26 U.S.C. 3121(d)(2),
 20 as in effect on December 31, 2019, and public officers. "Employee" does not include:

21 (a) Persons engaged as independent contractors.

22 (b) Seasonal, emergency or casual workers whose periods of employment with any public em-
 23 ployer or public employers do not total 600 hours in any calendar year.

24 (c) Persons provided sheltered employment or made-work by a public employer in an employment
 25 or industries program maintained for the benefit of such persons.

26 (d) Persons employed and paid from federal funds received under a federal program intended
 27 primarily to alleviate unemployment. However, any such person shall be considered an "employee"
 28 if not otherwise excluded by paragraphs (a) to (c) of this subsection and the public employer elects
 29 to have the person so considered by an irrevocable written notice to the board.

30 (e) Persons who are employees of a railroad, as defined in ORS 824.020, and who, as such em-
 31 ployees, are included in a retirement plan under federal railroad retirement statutes. This paragraph
 32 shall be deemed to have been in effect since the inception of the system.

33 (f) Persons employed in positions classified as post-doctoral scholar positions by a public uni-
 34 versity listed in ORS 352.002, or by the Oregon Health and Science University, under ORS 350.370.

35 (9) "Final average salary" means whichever of the following is greater:

36 (a) The average salary per calendar year paid by one or more participating public employers to
 37 an employee who is an active member of the system in three of the calendar years of membership
 38 before the effective date of retirement of the employee, in which three years the employee was paid
 39 the highest salary. The three calendar years in which the employee was paid the largest total salary
 40 may include calendar years in which the employee was employed for less than a full calendar year.
 41 If the number of calendar years of active membership before the effective date of retirement of the
 42 employee is three or fewer, the final average salary for the employee is the average salary per cal-
 43 endar year paid by one or more participating public employers to the employee in all of those years,
 44 without regard to whether the employee was employed for the full calendar year.

45 (b) One-third of the total salary paid by a participating public employer to an employee who is

1 an active member of the system in the last 36 calendar months of active membership before the ef-
2 fective date of retirement of the employee.

3 (10) "Firefighter" does not include a volunteer firefighter, but does include:

4 (a) The State Fire Marshal, the chief deputy fire marshal and deputy state fire marshals;

5 (b) An employee of the State Fire Marshal whose primary duties include fire investigation, fire
6 prevention, fire safety, fire control or fire suppression;

7 (c) An employee of the State Forestry Department who is certified by the State Forester as a
8 professional wildland firefighter and whose primary duties include the abatement of uncontrolled
9 fires as described in ORS 477.064; and

10 (d) An employee of the Oregon Military Department whose primary duties include fighting
11 structural, aircraft, wildland or other fires.

12 (11) "Fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 fol-
13 lowing.

14 (12) "Fund" means the Public Employees Retirement Fund.

15 (13) "Inactive member" means a member who is not employed in a qualifying position, whose
16 membership has not been terminated in the manner described by ORS 238.095 and who is not retired
17 for service or disability.

18 (14) "Institution of higher education" means a public university listed in ORS 352.002, the
19 Oregon Health and Science University and a community college, as defined in ORS 341.005.

20 (15) "Member" means a person who has established membership in the system and whose mem-
21 bership has not been terminated as described in ORS 238.095. "Member" includes active, inactive
22 and retired members.

23 (16) "Member account" means the regular account and the variable account.

24 (17) "Normal retirement age" means:

25 (a) For a person who establishes membership in the system before January 1, 1996, as described
26 in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or firefighter
27 or 58 years of age if the employee retires at that age as other than a police officer or firefighter.

28 (b) For a person who establishes membership in the system on or after January 1, 1996, as de-
29 scribed in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or
30 firefighter or 60 years of age if the employee retires at that age as other than a police officer or
31 firefighter.

32 (18) "Pension" means annual payments for life derived from contributions by one or more public
33 employers.

34 (19) "Police officer" includes:

35 (a) Employees of institutions defined in ORS 421.005 as Department of Corrections institutions
36 whose duties, as assigned by the Director of the Department of Corrections, include the custody of
37 persons committed to the custody of or transferred to the Department of Corrections and employees
38 of the Department of Corrections who were classified as police officers on or before July 27, 1989,
39 whether or not such classification was authorized by law.

40 (b) Employees of the Department of State Police who are classified as police officers, forensic
41 scientists or evidence technicians by the Superintendent of State Police.

42 (c) Employees of the Oregon Liquor and Cannabis Commission who are classified as regulatory
43 specialists by the administrator of the commission.

44 (d) Sheriffs and those deputy sheriffs or other employees of a sheriff whose duties, as classified
45 by the sheriff, are the regular duties of police officers or corrections officers.

1 (e) Police chiefs and police personnel of a city who are classified as police officers by the
2 council or other governing body of the city.

3 (f) Police officers who are commissioned by a university under ORS 352.121 or 353.125 and who
4 are classified as police officers by the university.

5 (g) Parole and probation officers employed by the Department of Corrections, parole and pro-
6 bation officers who are transferred to county employment under ORS 423.549 and adult parole and
7 probation officers, as defined in ORS 181A.355, who are classified as police officers for the purposes
8 of this chapter by the county governing body. If a county classifies adult parole and probation offi-
9 cers as police officers for the purposes of this chapter, and the employees so classified are repres-
10 ented by a labor organization, any proposal by the county to change that classification or to cease
11 to classify adult parole and probation officers as police officers for the purposes of this chapter is
12 a mandatory subject of bargaining.

13 (h) Police officers appointed under ORS 276.021 or 276.023.

14 (i) Employees of the Port of Portland who are classified as airport police by the Board of Com-
15 missioners of the Port of Portland.

16 (j) Employees of the State Department of Agriculture who are classified as livestock police of-
17 ficers by the Director of Agriculture.

18 (k) Employees of the Department of Public Safety Standards and Training who are classified by
19 the department as other than secretarial or clerical personnel.

20 (L) Investigators of the Criminal Justice Division of the Department of Justice.

21 (m) Corrections officers as defined in ORS 181A.355.

22 (n) Employees of the Oregon State Lottery Commission who are classified by the Director of the
23 Oregon State Lottery as enforcement agents pursuant to ORS 461.110.

24 (o) The Director of the Department of Corrections.

25 (p) An employee who for seven consecutive years has been classified as a police officer as de-
26 fined by this section, and who is employed or transferred by the Department of Corrections to fill
27 a position designated by the Director of the Department of Corrections as being eligible for police
28 officer status.

29 (q) An employee of the Department of Corrections classified as a police officer on or prior to
30 July 27, 1989, whether or not that classification was authorized by law, as long as the employee
31 remains in the position held on July 27, 1989. The initial classification of an employee under a sys-
32 tem implemented pursuant to ORS 240.190 does not affect police officer status.

33 (r) Employees of a school district who are appointed and duly sworn members of a law
34 enforcement agency of the district as provided in ORS 332.531 or otherwise employed full-time as
35 police officers commissioned by the district.

36 (s) Employees at youth correction facilities and juvenile detention facilities under ORS 419A.050,
37 419A.052 and 420.005 to 420.915 who are required to hold valid Oregon teaching licenses and who
38 have supervisory, control or teaching responsibilities over juveniles committed to the custody of the
39 Department of Corrections or the Oregon Youth Authority.

40 (t) Employees at youth correction facilities as defined in ORS 420.005 whose primary job de-
41 scription involves the custody, control, treatment, investigation or supervision of juveniles placed
42 in such facilities.

43 (u) Employees of the Oregon Youth Authority who are classified as juvenile parole and pro-
44 bation officers.

45 (v) Employees of the Department of Human Services *[who are prohibited from striking under*

1 *ORS 243.726 and*] whose duties include the care of residents of residential facilities, as defined in
 2 *ORS 443.400*, that house individuals with intellectual or developmental disabilities.

3 (w) Employees appointed as judicial marshals under *ORS 1.177* who are certified under *ORS*
 4 *181A.540*.

5 (x) Certified parole and probation officers employed by the State Board of Parole and Post-
 6 Prison Supervision.

7 (y) District attorneys and deputy district attorneys.

8 (20) "Prior service credit" means credit provided under *ORS 238.442* or under *ORS 238.225* (2)
 9 to (6) (1999 Edition).

10 (21) "Public employer" means the state, one of its agencies or any city, county, municipal or
 11 public corporation, political subdivision of the state or instrumentality thereof, or an agency created
 12 by one or more such governmental organizations to provide governmental services. For purposes of
 13 this chapter, such agency created by one or more governmental organizations is a governmental
 14 instrumentality and a legal entity with power to enter into contracts, hold property and sue and be
 15 sued.

16 (22) "Qualifying position" means one or more jobs with one or more participating public em-
 17 ployers in which an employee performs 600 or more hours of service in a full calendar year, or
 18 would perform 600 or more hours of service if the employee were employed for the full calendar
 19 year, excluding any service in a job for which a participating public employer does not provide
 20 benefits under this chapter pursuant to an application made under *ORS 238.035*.

21 (23) "Regular account" means the account established for each active and inactive member un-
 22 der *ORS 238.250*.

23 (24) "Retired member" means a member who is retired for service or disability.

24 (25) "Retirement credit" means a period of time that is treated as creditable service for the
 25 purposes of this chapter.

26 (26)(a) "Salary" means the remuneration paid an employee in cash out of the funds of a public
 27 employer in return for services to the employer, plus the monetary value, as determined by the
 28 Public Employees Retirement Board, of whatever living quarters, board, lodging, fuel, laundry and
 29 other advantages the employer furnishes the employee in return for services.

30 (b) "Salary" includes but is not limited to:

31 (A) Payments of employee and employer money into a deferred compensation plan, which are
 32 deemed salary paid in each month of deferral;

33 (B) The amount of participation in a tax-sheltered or deferred annuity, which is deemed salary
 34 paid in each month of participation;

35 (C) Retroactive payments described in *ORS 238.008*;

36 (D) Wages of a deceased member paid to a surviving spouse or dependent children under *ORS*
 37 *652.190*; and

38 (E) The full amount of required employee contributions under *ORS 238A.330* that are paid by the
 39 employer on behalf of its employees under *ORS 238A.335* (2)(b), solely for the purpose of computing
 40 a member's final average salary, and not for any other purpose.

41 (c) "Salary" or "other advantages" does not include:

42 (A) Travel or any other expenses incidental to employer's business which is reimbursed by the
 43 employer;

44 (B) Payments for insurance coverage by an employer on behalf of employee or employee and
 45 dependents, for which the employee has no cash option;

(C) Payments made on account of an employee's death;

(D) Any lump sum payment for accumulated unused sick leave;

(E) Any accelerated payment of an employment contract for a future period or an advance against future wages;

(F) Any retirement incentive, retirement severance pay, retirement bonus or retirement gratuitous payment;

(G) Payments for periods of leave of absence after the date the employer and employee have agreed that no future services qualifying pursuant to ORS 238.015 (3) will be performed, except for sick leave and vacation;

(H) Payments for instructional services rendered to public universities listed in ORS 352.002 or the Oregon Health and Science University when such services are in excess of full-time employment subject to this chapter. A person employed under a contract for less than 12 months is subject to this subparagraph only for the months to which the contract pertains;

(I) Payments made by an employer for insurance coverage provided to a domestic partner of an employee;

(J) Compensation described and authorized under ORS 341.556 that is not paid by the community college employing the faculty member;

(K) Compensation described and authorized under ORS 352.232 that is not paid by the public university employing the officer or employee;

(L) Compensation described and authorized under ORS 353.270 that is not paid by Oregon Health and Science University; or

(M) For years beginning on or after January 1, 2020, any amount in excess of \$195,000 for a calendar year. If any period over which salary is determined is less than 12 months, the \$195,000 limitation for that period shall be multiplied by a fraction, the numerator of which is the number of months in the determination period and the denominator of which is 12. On January 1 of each year, the board shall adjust the dollar limit provided by this subparagraph to reflect any percentage changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor.

(27) "School year" means the period beginning July 1 and ending June 30 next following.

(28) "System" means the Public Employees Retirement System.

(29) "Variable account" means the account established for a member who participates in the Variable Annuity Account under ORS 238.260.

(30) "Vested" means being an active member of the system in each of five calendar years.

(31) "Volunteer firefighter" means a firefighter whose position normally requires less than 600 hours of service per year.

SECTION 12. ORS 181A.490 is amended to read:

181A.490. (1) Except for a person who has requested and obtained an extension from the Department of Public Safety Standards and Training pursuant to subsection (2) of this section, a person may not be employed as a police officer, or utilized as a certified reserve officer, by a law enforcement unit for more than 18 months unless the person:

(a)(A) Is a citizen of the United States; or

(B) Is a nonimmigrant legally admitted to the United States under a Compact of Free Association; and

(b) Has been certified as being qualified as a police officer or certified reserve officer under the provisions of ORS 181A.355 to 181A.689 and the certification has not lapsed or been revoked pur-

1 suant to ORS 181A.630, 181A.640 and 181A.650 (1) and not been reissued under ORS 181A.650 (2).

2 (2) The department, upon the facts contained in an affidavit accompanying the request for an
3 extension, may find good cause for failure to obtain certification within the time period described
4 in subsection (1) of this section. If the department finds that there is good cause for failure to timely
5 obtain certification, the department may extend for up to one year the period that a person may
6 serve as a police officer or reserve officer without certification. The grant or denial of an extension
7 is within the sole discretion of the department.

8 (3) Except as provided in subsection (4) of this section, a person employed as a police officer
9 by a law enforcement unit shall commence the training necessary for certification under ORS
10 181A.355 to 181A.689 at an academy operated by the department not later than the 90th day after
11 the date of the officer's employment by the law enforcement unit.

12 (4) A law enforcement unit may delay the commencement of training of a police officer for up
13 to 120 days from the date of the officer's employment when it considers the delay necessary. When
14 a law enforcement unit delays commencement of a police officer's training under this subsection, the
15 law enforcement unit shall file a written statement of the law enforcement unit's reasons with the
16 department.

17 (5) When a delay in the commencement of training necessary for certification under ORS
18 181A.355 to 181A.689 at an academy operated by the department is caused by the inability of the
19 department, for any reason, to provide that training, the period of the delay may not be counted as
20 part of the periods set forth in subsections (3) and (4) of this section within which the training must
21 be commenced.

22 (6) A person utilized as a certified reserve officer by a law enforcement unit must complete the
23 training necessary for certification under ORS 181A.355 to 181A.689 at a site approved by the de-
24 partment.

25 (7) Notwithstanding any other provision of law, the law enforcement unit described in ORS
26 181A.355 [(12)(e)] (13)(e) shall bear the expense of training necessary for certification under ORS
27 181A.355 to 181A.689.

28 **SECTION 13.** ORS 181A.708 is amended to read:

29 181A.708. (1) As used in this section:

30 (a) "Crowd management" means a public security practice in which crowds are managed to
31 prevent the outbreak of crowd crushes, affrays, fights or riots, or in which an assembly, protest or
32 demonstration is dispersed.

33 (b)(A) "Handheld chemical incapacitant" means the following, together or separately:

34 (i) Handheld munitions and devices specifically designed to cause temporary pain, temporary
35 irritation, temporary disruption of vital processes, temporary incapacitation, temporary disability or
36 permanent harm through the toxic properties of toxic chemicals, or their precursors, that would be
37 released as a result of the employment of the handheld munitions and devices; and

38 (ii) Any equipment specifically designed for use directly in connection with the employment of
39 handheld munitions and devices as described in sub-subparagraph (i) of this subparagraph.

40 (B) "Handheld chemical incapacitant" does not include tear gas.

41 (c) "Key component of a binary or multicomponent chemical system" means the precursor that
42 plays the most important role in determining the toxic properties of the final product and that reacts
43 rapidly with other chemicals in a binary or multicomponent system.

44 (d) "Kinetic impact projectile" means all nonlethal, less-lethal or semilethal projectiles, includ-
45 ing but not limited to rubber and plastic bullets, beanbag rounds, sponge rounds and pellet rounds.

(e) "Law enforcement agency" means the Department of State Police, the Department of Justice, a district attorney, a political subdivision of the State of Oregon, a municipal corporation of the State of Oregon and a university, that maintains a law enforcement unit as defined in ORS 181A.355 [(12)(a)(A)] **(13)(a)(A)**.

(f) "Precursor" means any chemical reactant that takes part at any stage in the production by whatever method of a toxic chemical, including any key component of a binary or multicomponent chemical system.

(g) "Tear gas" means oleoresin capsicum or orthochlorobenzalmalononitrile, or other similar chemicals meant to accomplish the same effect, administered by any shell, cartridge or bomb capable of being discharged or exploded, when the discharge or explosion will cause or permit the release or emission of the chemicals.

(h) "Toxic chemical" means any chemical that through its chemical action on biological processes can cause death, temporary pain, temporary irritation, temporary disruption of vital processes, temporary incapacitation, temporary disability or permanent harm to humans or animals.

(2) A law enforcement agency may not use a handheld chemical incapacitant for crowd management.

(3) A law enforcement agency may not use tear gas for crowd management except when:

(a) The use is objectively reasonable by law enforcement to:

(A) Defend against a threat to life or serious bodily injury to any individual, including any peace officer; or

(B) Bring an objectively dangerous and unlawful situation safely and effectively under control;

(b) A commanding officer authorizes the use of tear gas;

(c) De-escalation techniques or other alternatives to force have been attempted, when reasonable, and failed; and

(d) The law enforcement agency has done the following, in the following order:

(A) Announced the agency's intent to use tear gas;

(B) Allowed sufficient time for individuals to evacuate the area; and

(C) Announced a second time, immediately before using the tear gas, the agency's intent to use tear gas.

(4)(a) A law enforcement agency may not use a kinetic impact projectile for crowd management.

(b) A law enforcement agency may not discharge a kinetic impact projectile in a manner that intentionally targets the head of a person, except against an individual engaged in conduct otherwise justifying the use of deadly physical force by a peace officer under ORS 161.242.

(5) This section does not prohibit a law enforcement agency or a peace officer from using a handheld chemical incapacitant or kinetic impact projectile against an individual engaged in conduct otherwise justifying the use of physical force under ORS 161.195 to 161.275.

(6) A law enforcement agency, when it is safe and possible to do so, shall minimize the incidental impact of the agency's use of handheld chemical incapacitants, tear gas and kinetic impact projectiles on bystanders, medical personnel, journalists and other unintended targets.

(7) When handheld chemical incapacitants, tear gas or kinetic impact projectiles are used in a crowd by a law enforcement agency, the agency shall make efforts to notify emergency rooms in the vicinity of the type of handheld chemical incapacitants, tear gas or kinetic impact projectiles used.

(8) A law enforcement agency shall adopt policies requiring the cleanup of visible debris caused by the use of tear gas and kinetic impact projectiles within a reasonable time of the use of tear gas and kinetic impact projectiles.

(9) A law enforcement agency may not use electronically amplified noise-producing equipment for crowd management except for announcements or to facilitate movement of an emergency vehicle as allowed or required by ORS 820.300 or any other provision of law. Whenever possible, a law enforcement agency shall provide announcements for purposes of crowd management both audibly and visually.

(10) When using handheld chemical incapacitants, tear gas, kinetic impact projectiles or electronically amplified noise-producing equipment in compliance with this section, and when it is possible to do so safely, a law enforcement agency:

(a) Shall attempt to take injured persons to safety or allow injured persons to seek medical help.

(b) May not prevent emergency medical services from reaching injured persons.

(c) Shall take reasonable action to accommodate disabilities when issuing or enforcing orders to disperse.

(11) This section does not prohibit a law enforcement agency from adopting more stringent policies than are required by this section for the use of chemical incapacitants, tear gas, kinetic impact projectiles and electronically amplified noise-producing equipment.

(12) A law enforcement agency shall inform federal law enforcement agencies of the requirements of this section.

SECTION 14. ORS 181A.710 is amended to read:

181A.710. (1) As used in this section, "law enforcement agency" means the Department of State Police, the Department of Justice, a district attorney, a political subdivision of the State of Oregon, a municipal corporation of the State of Oregon and a university, that maintains a law enforcement unit as defined in ORS 181A.355 [(12)(a)(A)] **(13)(a)(A)**.

(2) A law enforcement agency or a person acting on behalf of a law enforcement agency may not:

(a) Use a proxy law enforcement agency to use crowd management measures that a court or statute has barred the law enforcement agency from using.

(b) Act in concert with another law enforcement agency to engage in misconduct barred by a court order or statute.

(3) Intentional violation of this section constitutes official misconduct in the second degree under ORS 162.405.

SECTION 15. ORS 181A.775 is amended to read:

181A.775. As used in ORS 181A.775 to 181A.805:

(1) "Employ," when used in the context of the relationship between a law enforcement agency and a police officer, includes the assignment of law enforcement duties on a volunteer basis to a reserve officer.

(2) "Law enforcement agency" means the Department of State Police, the Department of Justice, a district attorney, a political subdivision of the State of Oregon, a municipal corporation of the State of Oregon, a tribal government and a university, that maintains a law enforcement unit as defined in ORS 181A.355 [(12)(a)(A)] **(13)(a)(A)**.

(3) "Police officer" means a person who is:

(a) A police officer or reserve officer as defined in ORS 181A.355; and

(b) Employed by a law enforcement agency to enforce the criminal laws of this state.

(4) "Tribal government" means a tribal government as defined in ORS 181A.940:

(a) With land that is contiguous to the county in which the deadly physical force planning authority is created; and

1 (b) That has adopted the provision of tribal law described in ORS 181A.942 (1)(d)(C)(i).
2 **SECTION 16. ORS 243.732, 243.736, 243.738 and section 5, chapter 43, Oregon Laws 2021,**
3 **are repealed.**
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