

Requested by Representative NELSON

**PROPOSED AMENDMENTS TO
HOUSE BILL 2944**

1 On page 1 of the printed bill, line 3, after the first semicolon delete the
2 rest of the line and insert “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 per-
6 son has engaged in or is engaging in any unfair labor practice listed in ORS
7 243.672 (1) to (4) and 243.752, the Employment Relations Board or its agent
8 shall:

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

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

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

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

21 “(a) State its findings of fact;

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

3 “(c) Take such affirmative action, including but not limited to the rein-
4 statement of employees with or without back pay, as necessary to effectuate
5 the purposes of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.809 and
6 341.290;

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

9 “(e) Designate the amount and award attorney fees, if any, to the pre-
10 vailing party on appeal, including proceedings for Supreme Court review, of
11 a board order.

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

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

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

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

21 “(A) The complaint has been affirmed pursuant to subsection (2) of this
22 section and the board finds that the person who has committed, or who is
23 engaging, in an unfair labor practice has done so repetitively, knowing that
24 the action taken was an unfair labor practice and took the action disre-
25 garding this knowledge, or that the action constituting the unfair labor
26 practice was egregious; or

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

30 “(b) Notwithstanding paragraph (a) of this subsection, if the board finds

1 that a public employer named in the complaint violated ORS 243.670 (2), the
2 board shall impose a civil penalty equal to triple the amount of funds the
3 public employer expended to assist, promote or deter union organizing.

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

11 **“(B) In determining the amount of the civil penalty to impose under**
12 **this paragraph, the board shall consider extenuating circumstances**
13 **that the employer has proven contributed to or caused the violation.**
14 **An extenuating circumstance is not an affirmative defense to a vio-**
15 **lation described in subparagraph (A) of this paragraph.**

16 “(5) As used in subsections (1) to (4) of this section, ‘person’ includes but
17 is not limited to individuals, labor organizations, associations and public
18 employers.

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

20 “243.806. (1) A public employee may enter into an agreement with a labor
21 organization that is the exclusive representative to provide authorization for
22 a public employer to make a deduction from the salary or wages of the public
23 employee, in the manner described in subsection (4) of this section, to pay
24 dues, fees and any other assessments or authorized deductions to the labor
25 organization or its affiliated organizations or entities.

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

29 “(3)(a) In addition to making the deductions and payments to a labor or-
30 ganization or entity described in subsection (1) of this section, a public em-

1 ployer shall make deductions for and payments to a noncertified, yet bona
2 fide, labor organization, if so requested and authorized by a public employee,
3 in the manner described in subsection (4) of this section.

4 “(b) The deductions and payments made in accordance with this sub-
5 section shall not be deemed an unfair labor practice under ORS 243.672.

6 “(4)(a) A public employee may provide authorization for the deductions
7 described in this section by telephonic communication or in writing, includ-
8 ing by an electronic record or electronic signature, as those terms are de-
9 fined in ORS 84.004.

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

14 “(5) Notwithstanding subsections (1) to (4) of this section, a collective
15 bargaining agreement between a labor organization and a public employer
16 may authorize a public employer to make a deduction from the salary or
17 wages of a public employee who is a member of the labor organization to pay
18 dues, fees or other assessments to the labor organization or its affiliated
19 organizations or entities.

20 “(6) A public employee’s authorization for a public employer to make a
21 deduction under subsections (1) to (4) of this section shall remain in effect
22 until the public employee revokes the authorization in the manner provided
23 by the terms of the agreement. If the terms of the agreement do not specify
24 the manner in which a public employee may revoke the authorized deduction,
25 a public employee may revoke authorization for the deduction by delivering
26 an original signed, written statement of revocation to the headquarters of
27 the labor organization.

28 “(7) A labor organization shall provide to each public employer a list
29 identifying the public employees who have provided authorization for a
30 public employer to make deductions from the public employee’s salary or

1 wages to pay dues, fees and any other assessments or authorized deductions
2 to the labor organization. A public employer shall rely on the list to make
3 the authorized deductions and to remit payment to the labor organization[.]
4 **within a time period that aligns with a payroll processing schedule**
5 **established by the employer not to exceed 30 calendar days following**
6 **the date of the deduction.**

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

11 “(b) A labor organization that receives payment from a public employer
12 shall defend and indemnify the public employer for the amount of any un-
13 authorized deduction resulting from the public employer’s reliance on the
14 list.

15 “(9) If a labor organization provides a public employer with the list de-
16 scribed in subsection (7) of this section and the employer fails to make an
17 authorized deduction and remit payment to the labor organization, the public
18 employer is liable to the labor organization, without recourse against the
19 employee who authorized the deduction, for the full amount that the em-
20 ployer failed to deduct and remit to the labor organization.

21 “(10)(a) If a dispute arises between the public employee and the labor or-
22 ganization regarding the existence, validity or revocation of an authorization
23 for the deductions and payment described under subsections (1) and (2) of
24 this section, the dispute shall be resolved through an unfair labor practice
25 proceeding under ORS 243.672.

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

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