

---

**Finance Committee**

---

**HB 2351**

**Brief Description:** Establishing a state tax policy that prohibits employers claiming certain tax incentives from requiring employees to participate in certain communications about political, religious, or labor organizing matters.

**Sponsors:** Representatives Sells, Campbell, Conway, Green, Hudgins, Hasegawa, Appleton, Ormsby, Hurst, Chase, Dickerson, VanDeWege and Simpson.

**Brief Summary of Bill**

- Requires the Joint Legislative Audit and Review Committee to study the feasibility of disallowing tax incentives for employers that require attendance at employer-sponsored meetings that communicate certain religious or political matters.

**Hearing Date:**

**Staff:** Jeff Mitchell (786-7139).

**Background:**

The First Amendment of the United States Constitution prohibits the government from constraining or restricting the speech or other expression of individuals. The United States Supreme Court requires the government to provide substantial justification for the interference with the right of free speech where it attempts to regulate or prohibit the speech.

As part of this First Amendment protection, employers are not generally prohibited from requiring employees to attend meetings during which the employer communicates his or her positions on issues. An employer, generally speaking, has the right to control what messages are expressed on its own property.

One exception involves certain communications about labor relations. Both the National Labor Relations Board (Board), in administering private sector collective bargaining under the National Labor Relations Act, and the Washington Public Employment Relations Commission (PERC), in administering most public sector collective bargaining in Washington, apply a doctrine generally known as the "captive audience" doctrine. This doctrine determines when an employer may be

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

prohibited from requiring employees to attend employer-called meetings about unionization and when union representation election activities by labor organizations may be curtailed.

Briefly, under the Board and federal court cases, employers do not commit unfair labor practices by requiring employees to attend speeches about unionization on the employer's premises during working hours as long as the speech is not coercive. Whether speech is coercive generally depends on the content of the speech in the context of the employer-employee relationship. The courts have, for example, prohibited employer statements that threaten retaliation, while allowing the employer to make predictions about the effect of unionization based on objective facts.

The Board, however, has set additional limits for representation elections. Employers (and unions) are prohibited from making election speeches on company time to massed assemblies of employees within 24 hours before the scheduled time of an election when employee attendance is mandatory. Outside this limit, and subject to the "coercive speech" prohibition, the employer is not prohibited from using captive audiences to make election speeches.

The PERC has adopted a similar rule that prohibits election speeches on the employer's time to massed assemblies of employees beginning when ballots are issued and continuing until the ballots are tallied.

**Summary of Bill:**

Employers are prohibited from requiring employees to participate in any communications with the employer if the primary purpose is to communicate the employer's opinion about religious or political matters. Employers are prohibited from discharging employees that, in good faith, report violations.

Within 90 days of a suspected violation, an employee may bring an action in the superior court where the violation is alleged to have occurred or where the employer has its principal place of business. A prevailing employee is awarded treble damages, reasonable attorneys' fees, and costs.

Within 90 days of a suspected violation, a taxpayer may bring an action in the superior where the violation is alleged to have occurred or where the employer has its principal place of business. A prevailing employee is awarded reasonable attorneys' fees and costs and the employer is prohibited from taking tax incentives for the remainder of the current year and the following calendar year. The disallowance of tax incentives would apply to businesses in the aerospace industry.

**Appropriation:** None.

**Fiscal Note:** Requested on March 7, 2007.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.