

# HOUSE BILL REPORT

## HB 2016

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### As Reported by House Committee On:

Commerce & Labor

**Title:** An act relating to employers that use public funds to encourage or discourage unionization.

**Brief Description:** Prohibiting use of public funds to encourage or discourage unionization.

**Sponsors:** Representatives Conway, Hudgins, Campbell, Cody, Kenney, Blake, Miloscia, Romero, Wallace, O'Brien, Wood, Chase, Simpson, Berkey, Darneille, Hunt, Moeller, Upthegrove, Edwards, Kagi and Santos.

### Brief History:

#### Committee Activity:

Commerce & Labor: 2/27/03, 3/5/03 [DPS].

#### Brief Summary of Substitute Bill

- Prohibits various entities who contract with the state or receive state funding from using the state funds to encourage or discourage unionization by its employees.
- Creates civil penalties for violations and allows tax payers to bring civil actions for appropriate relief.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Chandler, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Crouse and Holmquist.

**Staff:** Chris Cordes (786-7103).

### Background:

Under the federal National Labor Relations Act, covered employees in the private sector have various rights related to collective bargaining. These rights include the right to form, join, or assist labor organizations and the right to refrain from these activities. It is an unfair labor practice for an employer or a union to interfere with, restrain, or coerce employees in the exercise of these rights or to discriminate against employees in regard to hiring or job tenure to encourage or discourage membership in a labor organization. It is not an unfair labor practice for an employer to express his or her views if the expression of views contains no threat of reprisal or promise of benefit.

These employee rights are referenced in a number of laws providing federal funding for specific programs. For example, the Workforce Investment Act requires recipients of funding to provide assurances to the Secretary of the Department of Labor that the funds will not be used to assist, promote, or deter union organizing.

The Public Employment Relations Commission administers similar employee rights and unfair labor practices under Washington's public employee collective bargaining laws.

California and New York have adopted laws that prohibit employers who receive funds from the state under a grant or contract from using state funds to encourage or discourage union organizing.

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### **Summary of Substitute Bill:**

The stated legislative policy of the state is not to interfere with an employee's choice about whether to join or be represented by an employee organization and, therefore, the state should not subsidize efforts by employers to encourage or discourage unionization.

#### The Neutrality Requirement

Various entities that contract with the state or receive state funding may not use state funds to encourage or discourage unionization, which means attempting to influence the decision of its employees or its subcontractor's employees regarding whether to support or oppose an employee organization that seeks to represent them or to become a member of the organization.

This prohibition on the use of state funds applies to state grant recipients, including those awarded grants by other public agencies using state funds for service contracts over \$50,000, state contractors with service contracts over \$50,000 during the term of the contract, public employers, and private sector employers receiving more than \$10,000 in a calendar year for participation in a state program.

All state contractors, regardless of the monetary threshold, are prohibited from encouraging or discouraging unionization by employees on a state contract, including a

public works contract.

An employer that derives revenue from a lease of state property may not encourage or discourage unionization by his or her employees who are employed on or in relation to that property.

#### Accounting for State Funds

Grant recipients, state contractors, and covered private employers must keep records sufficient to show no misuse of the funds if engaging in activities that encourage or discourage unionization. Grant recipients, state contractors requesting reimbursement, and covered private sector employers must certify that the funds will not be used for engaging in activities that encourage or discourage unionization.

If a grant recipient receives state funds that are designated by the state for a specific expenditure, the funds must be allocated to that expenditure. If the funds are not designated for a specific expenditure, the funds must be allocated on a pro rata basis to all of the recipient's expenditures that support the program for which the grant is made.

Contracts for the payment of state funds to an employer must contain a clause requiring the employer to comply with the neutrality requirement.

#### Exemptions

These provisions do not apply to:

- addressing grievances or negotiating collective bargaining agreements;
- allowing an employee organization access to the employer's facilities;
- performing an activity required by law or a collective bargaining agreement; or
- negotiating or carrying out a voluntary recognition agreement with an employee organization.

The provisions do not apply to expenditures or requests for reimbursements made before September 1, 2003, or to grants or contracts entered into before September 1, 2003, unless the grants or contracts are modified or extended.

#### Penalties and Enforcement

A state contractor, grant recipient, or private employer misusing state funds is liable for repayment of misused funds, plus a civil penalty of twice that amount. A civil penalty of \$1,000 per employee per violation applies to employers who derive revenue from using state property and who encourage or discourage unionization by their employees and to state contractors who encourage or discourage unionization by employees working under a state contract.

Public officials are liable for repayment of misused funds.

A taxpayer may bring a civil action for injunctive relief, civil penalties, or other appropriate relief. The prevailing plaintiff may be awarded costs and attorneys' fees.

**Substitute Bill Compared to Original Bill:**

The substitute bill (1) modifies the intent section; (2) provides a definition of "encouraging or discouraging unionization;" (3) sets various monetary thresholds for coverage of grant recipients, state contractors, and private employers; (4) adds various exemptions; (5) modifies the penalties by creating additional civil penalties and removing provisions that would have debarred a state contractor from public funds for violations and would have established a misdemeanor for failure to keep records as ordered; (6) deletes requirements for the Department of Labor and Industries to hold hearings and order record keeping; and (7) removes provisions for the Attorney General to bring a civil action for knowing violations.

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**Appropriation:** None.

**Fiscal Note:** Available

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect on July 1, 2003.

**Testimony For:** State funds are not being used in the way that was intended by the Legislature when employers who receive state funds use these funds to engage in anti-union campaigns. These tactics are often very heavy handed and may include hiring anti-union consultants, preparing anti-union materials, or paying employees to engage in anti-union activities. Research indicates that most employers use tactics such as captive audience meetings, one-on-one meetings and other types of individual worker harassment and intimidation, and anti-union videos. When a worker gets fired for participating in union activities, the remaining workers are afraid to talk to or be seen with that worker for fear of retaliation. These anti-union campaigns are very expensive; legal fees alone are large costs. Adding this requirement to Washington law will protect front-line workers who are trying to improve their stressful working conditions. Many federal programs and at least two states, California and New York, require employers receiving public funds to remain neutral. This is simply an accountability act.

**Testimony Against:** This bill will cause a problem even for employers that have unionized work forces. Sometimes the problems that confront employers involve jurisdictional disputes between unions. This bill would prohibit employers from even thinking about these problems, whether or not they receive public funds, if the worksite is on public lands such as harbor lands. This bill also cuts into the employer's rights to

express his or her views under the National Labor Relations Act. It allows two actions against an employer, a complaint process with the Department of Labor and Industries and a civil action brought by the Attorney General. Labor relations laws are adequate to address any problems raised by the bill's proponents. It is not clear why the state should be telling an employer what he or she can do with money earned by performing a service for the state. The laws in California and New York are somewhat narrower than this proposal.

**Testified:** (In support) Robby Stern, Washington State Labor Council; Emily Van Bronkhorst, Service Employees International Union, Local 1199; Matthew Haney, Service Employees International Union, Local 775; and William Caskey and Michelle Matesen, United Food and Commercial Workers, Local 1001.

(Opposed) Randy Ray, Puget Sound Steamship Operators Association; Amber Balch, Association of Washington Business; and Rick Slunaker, Associated General Contractors of Washington.