

# HOUSE BILL REPORT

## HB 2351

---

**As Reported by House Committee On:**  
Finance

**Title:** An act relating to 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.

**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 History:**

**Committee Activity:**

Finance: 3/5/07 [DPS].

**Brief Summary of Substitute 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.

---

### HOUSE COMMITTEE ON FINANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Conway, Ericks, McIntire and Santos.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Orcutt, Ranking Minority Member; Condotta, Assistant Ranking Minority Member and Roach.

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

**Background:**

---

*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.*

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. Generally, an employer 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 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 Substitute Bill:**

The Joint Legislative Audit and Review Committee (JLARC) is required to conduct a study on the feasibility of implementing a state tax policy that disallows employer tax incentives if the employer requires employee participation in employer-to-employee communications regarding certain political, religious, or labor organizing positions of the employer. A report must be submitted to the fiscal committees of the Legislature by December 1, 2007. Some of

the factors the report must address are legal issues, economic impacts, similar efforts in other states, and implications with respect to collective bargaining agreements.

**Substitute Bill Compared to Original Bill:**

The substitute bill replaces the provisions of the original bill with a requirement for JLARC to conduct a study on the feasibility of implementing a state tax policy that disallows employer tax incentives if employers engage in employer-to-employee communications where the purpose is to convey political, religious, or labor organizing positions to the employee.

---

**Appropriation:** None.

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

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

**Staff Summary of Public Testimony:**

(In support) This bill protects workers' rights by keeping them free from intimidation and indoctrination by employers. It allows workers to organize unions without threats from employers and safeguards workers from being compelled to attend anti-union meetings. Many aerospace machinist jobs have been outsourced overseas and out of state for many reasons.

(Neutral) We are neutral on whether or not the state conducts a study of this issue.

(Opposed) None.

**Persons Testifying:**

(In support) Representative Sells, prime sponsor; Larry Brown, International Association of Machinists and Aerospace Workers, District 751.

(Neutral) Steve Gano, Goodrich Aviation.

**Persons Signed In To Testify But Not Testifying:** None.